

# LEGISLATIVE COUNCIL

Friday 29 June 2001

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**The President (The Hon. Dr Meredith Burgmann)** took the chair at 10.00 a.m.

**The President** offered the Prayers.

## BUSINESS OF THE HOUSE

### Precedence of Business

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

That on Friday 29 June 2001 Government Business take precedence of General Business.

## TABLING OF PAPERS

**The Hon. Carmel Tebbutt** tabled the following paper:

Privacy Committee Act 1975 and Privacy and Personal Information Protection Act 1998—Report of Privacy New South Wales for year ended 30 June 1999.

**Ordered to be printed.**

## PETITION

### 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**.

## BUSINESS OF THE HOUSE

### Withdrawal of Business

**Private Members' Business item No. 93 outside the Order of Precedence withdrawn by Reverend the Hon. Fred Nile.**

## WORKERS COMPENSATION LEGISLATION AMENDMENT BILL (No 2)

### In Committee

**Clause 1 agreed to.**

**Consideration of clause 2 postponed.**

**Clause 3 agreed to.**

### Schedule 1

**Ms LEE RHIANNON** [10.11 a.m.]: I move Greens amendment No. 1:

No. 1 Page 4, schedule 1 [6], proposed section 87F (2). Insert after line 28:

, and

- (c) the President or a Deputy President of the Commission has approved the commutation agreement on the basis that it is in the best interests of the worker at a hearing before the Commission.

As I outlined in my contribution to the second reading debate, this amendment represents a very important advance for the legislation. If we are going to have a system that delivers for the majority of people in this State, workers must be entitled to full representation. This amendment changes new section 87F by inserting a provision that the President or a deputy president of the commission must approve a commutation agreement on the basis that it is in the best interests of the worker. That is how the Compensation Court currently works. The bill provides that, instead of gaining court approval of commutation, a commutation agreement needs only to be registered with the commission. The new section changes what is currently a judicial power into an administrative arrangement. Such an administrative arrangement is what really diminishes justice so severely in respect of workers compensation. That is clearly unacceptable.

It is important that commutation agreements are reviewed by an independent body. This is particularly important for young workers or for workers who are experiencing financial difficulty, who may be tempted by the offer of a large sum of cash. It is particularly important for young workers because, as we know, many young apprentices are on incredibly low wages. I think many members would be surprised to learn that apprentices are often paid about only \$5 per hour, and the temptation of a large sum would be hard to resist. As I said, young people and those experiencing financial difficulty could be tempted by the offer of a large sum of cash—even though it may be inferior to their weekly benefits extrapolated out over a significant period of time. It might be argued that this type of overview is not required in respect of other transactions.

However, in this case the commutations often involve blue-collar workers with little or no savings and with little or no experience of financial transactions of this size. Those workers could obviously be taken advantage of and really end up much worse off. We constantly hear assurances from the Government that it is committed to designing a scheme that improves the lot of workers, so surely it could come to the party on this issue. Further, commutation involves finalising rights which thus places it in a special category. It might also be argued that lawyers are paid too much to formalise the procedure, but vast amounts of responsibility are involved in giving advice on, for example, the impacts on social security, resignation from work and other employee industrial rights.

Commutation is a comprehensive agreement and obviously needs to be considered very carefully. Because it is a comprehensive agreement, commutation on some occasions can be simple, but is often much more involved. It is because of that complexity that we believe our amendment is most important. Protection of the rights of the worker involved requires considerable experience and is a heavy responsibility indeed. I have a feeling that we will have to repeat that many times during this debate, that it should be remembered that the issue of responsibility—and responsibility to the most vulnerable—should be a priority for all of us. This is a most important amendment, which seeks to undo one piece of the damage that this bill will cause. I urge members to support it, as it will help to ensure we get the whole management of workers compensation in this State back on track. I commend the amendment to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [10.17 a.m.]: The bill includes provisions that allow commutation agreements to be registered, subject to reasonable safeguards. That contrasts with the current arrangement where all proposed commutations must be approved by the Compensation Court, whatever the wish of the parties may be. The amendment would effectively return to that arrangement by requiring the president or a deputy president of the commission to hear the commutation proposal and give approval. That further requirement, which would include additional costs, is unnecessary in view of the safeguards in the bill. Those safeguards include a requirement that an independent legal practitioner must have fully advised the worker of the implications of commuting the claim. The amendment is opposed.

**Amendment negatived.**

**The Hon. PETER BREEN** [10.18 a.m.]: I move Reform the Legal System amendment No. 2:

No. 2 Page 10, schedule 1 [10], proposed clause 1 (4), lines 1-4. Omit all words on those lines.

This amendment seeks to delete the reference to commutations being retrospective. Making the legislation retrospective has several implications. First, it will mean that the assessment by approved medical specialists will be binding, when it currently is not. Second, retrospective legislation will probably affect the entitlement of the worker to sue for damages. Third, retrospective legislation will deprive workers of access to a judge and the court process, which is currently available. Additionally, retrospective legislation will impose new guidelines not presently known on the assessment of old injuries. I commend the amendment to the Committee.

**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) [10.19 a.m.]: The amendment would mean that where the Compensation Court has previously refused to approve the proposed commutation, the worker would be denied access to the new commutation agreement and registration provisions. The result would be that workers in that situation would remain as permanent claimants within the scheme without settlement. Access to the new agreement and registration procedures should not be denied on such an arbitrary basis. Workers may find themselves in circumstances where an agreed commutation becomes highly appropriate. Safeguards are included in the new registration procedure, including a requirement that legal advice be obtained and the proposed cooling-off period. The amendment is opposed.

**Ms LEE RHIANNON** [10.20 a.m.]: The Greens support the amendment. People in this place display great passion about the issue of retrospectivity. The argument is often trotted out that legislation cannot possibly be introduced if it applies retrospectively. But it seems that the argument is used only when it is opportune, when it suits one's purposes. The Government is pushing a retrospective provision that is not to the advantage of the majority of people in New South Wales. As the Hon. Peter Breen has outlined, people who have suffered injuries and hardships and who are involved in the compensation system could have new guidelines imposed on them. It is clearly contradictory for the Government to be backing retrospectivity. The Greens support the amendment.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [10.21 a.m.]: The Democrats have a well-known position of not supporting retrospective legislation, so we support the amendment to remove a retrospective aspect of the bill.

**Amendment negatived.**

**Schedule 1 agreed to.**

## **Schedule 2**

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [10.22 a.m.]: I move Opposition amendment No. 1:

- No. 1 Page 12, schedule 2.2 [1], proposed section 42B, lines 6-8. Omit "Funds may only be provided within 3 years after the commencement of this section." Insert instead:
- (4) The maximum amount of funds that may be provided to any organisation under this section during any financial year is \$50,000.
  - (5) Funds may only be provided within a period of 1 year after the commencement of this section (*the initial period*). However, funds may be provided for a period of 2 years following the expiry of the initial period (*the additional period*) if, before the expiry of the initial period, both Houses of Parliament pass a resolution approving the provision of funds during the additional period.
  - (6) Before the Authority first provides any funds under this section, the Authority is to:
    - (a) advertise in a newspaper circulating in New South Wales for expressions of interest from organisations to provide claims assistance, and
    - (b) publish in the Gazette the name of each organisation to which the Authority intends to provide funds and a description of the claims assistance that the organisation is to provide.
  - (7) Within 1 month after the expiry of the initial period, a statement is to be laid before each House of Parliament setting out:
    - (a) the name of each organisation to which funds have been provided under this section, and
    - (b) the amount paid to each organisation, and
    - (c) a description of the claims assistance provided by the organisation.

The amendment is consistent with the Opposition's aim of adding a level of transparency to the bill. The Opposition has concerns about the new concept of providing claims assistance to both employees and employers, which is a new cost driver in the scheme. We realise that the long-term aim is to reduce the number of unsubstantiated claims. We recognise that in the next couple of years during the transition period to the new scheme there will be some in-flight turbulence as people become aware of the implications of the new legislation. We see the funding for claims assistance as providing the Labor Government with an opportunity to build up its depleted support base with the union movement—the old carrot and stick method to get the union movement back on side.

**The Hon. Duncan Gay:** This is the new Evatt Foundation.

**The Hon. MICHAEL GALLACHER:** Yes. The bill does not contain details of how the funding will be administered and who will have access to it other than the very fluid term "organisations representing employers or employees". The first part of the amendment sets an annual maximum amount of \$50,000 that will be available through claims assistance to each organisation. The Government has not explained how much money will be available in the pool for claims assistance and therefore how many organisations will be entitled to funding. In a worst-case scenario, funding of a large number of organisations could quickly add significant cost to the scheme. We are debating the scheme to get costs under control. Subsection (4) of new section 42B limits the amount of funds to \$50,000. We also believe that the Parliament should maintain scrutiny over the scheme. That is fair. The bill provides for the scheme to operate for three years. The Opposition does not oppose the three-year period but there should be probity in the distribution of funds. We do not want to find out in three years time that there has been a massive blow-out in spending on advice or claims assistance.

Subsection (5) provides that in the first year of the scheme the Parliament would have to approve additional funding for the following two years. So at the end of the first 12 months of operation of the scheme the Minister will have to come back to the Parliament with information from the WorkCover Authority—this is provided for in subsections (6) and (7)—detailing the names of each organisation to which funds have been provided, the amount paid to each organisation and a description of the claims assistance provided to each organisation. That will ensure that the scheme's costs do not run out of control. The same provisions will apply to employees and employers. We are not opposing claims funding or inserting strict criteria on who will qualify.

**The Hon. Duncan Gay:** You are a very generous man.

**The Hon. MICHAEL GALLACHER:** I acknowledge the interjection, to put it on the record. I am sure the Hon. John Della Bosca will be the second to congratulate the Opposition on its generosity in this regard. The amendment is all about ensuring that Parliament maintains a level of probity in the scheme. It is Parliament's responsibility to ensure that all the cost drivers of the workers compensation system are held in check or, if possible, forced down. The amendment is straightforward. It also requires that the authority advertise in newspapers circulating throughout New South Wales for expressions of interest from organisations before providing claims assistance. This is to make sure that everyone knows that the funding is available, not just those in the club. That will apply to both employees and employers: every organisation throughout New South Wales will have the opportunity to apply. The name of each organisation that the authority intends to provide funds to and a description of the claims assistance will be published in the *Government Gazette*. Again, it is about Parliament exercising its responsibility to maintain probity in various aspects of the new legislation.

**The Hon. MALCOLM JONES** [10.29 a.m.]: I support the amendment, which will provide a good safeguard for the current Government and for future governments. I have a concern about enshrining the figure of \$50,000 in the bill, because it could be eroded with inflation. In any event the workers compensation legislation will have to be revisited from time to time.

**The Hon. Greg Pearce:** Every three years.

**The Hon. MALCOLM JONES:** If it is three years from the enactment of the legislation, it is probably all right.

**The Hon. Michael Gallacher:** An organisation would get \$150,000 over three years.

**The Hon. MALCOLM JONES:** It is a safeguard with good transparency. As an act of good faith I suggest that the Government support the amendment. I commend the amendment to the Committee.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [10.31 a.m.]: I am in two minds about this amendment.

**The Hon. Greg Pearce:** You are in two minds over most things.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** That is not true. I have been accused of being too dogmatic on many issues. This amendment increases accountability. The fundamental problem is that the bill is a shell bill; it gives immense discretion to the Minister and his regulation makers. That is a major flaw in the bill and I believe it should be rejected. This amendment attempts, to some extent, to give some sort of

transparency so that we know where the authority is putting the money. The amount need not be limited to \$50,000. I would like to move an amendment to delete that amount. If a cause is sufficiently worthy and deserves more than \$50,000, then give more and do so transparently.

I propose to move an amendment to give money to Injuries Australia for the 75 per cent of workers who are not unionised. That organisation currently operates with no money, and it would be able to give advice and advocacy far better if it had more money, but it needs more than \$50,000. If the money were provided as a honey pot for friends, then that would be a worry and therefore transparency is needed. If the money were used to replace lawyers with other advisory services, and I wonder whether that is the case, then that should be stated. If we are saying that the legal system is too expensive and we now have a commission with non-legal people to advise workers, and that is part of the funding mechanism for a union-based advisory system, then that should be stated, and it should be transparent.

That may or may not be a bad thing. It will need people who are in favour of taking a worker's perspective to advocate for unionists. If the objective is to fund groups to assist people to run a better and more financially prudent case than the existing confrontational legal system, then that may be fine. To have it be discretionary, to pass a shell bill under which nothing is accountable and it is not clear what is going on, is wrong. The amendment is reasonable. However, if there were some clear objective, for instance funding a group such as Injuries Australia, \$50,000 would be less than an individual's salary. I ask the Minister to clarify that. My inclination is to support the amendment and I would move the deletion of subsection (4) from the amendment, if the Opposition would accept it. Therefore, I move:

That the amendment be amended by deleting proposed subsection (4).

**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) [10.34 a.m.]: The Government's concern is to ensure that the Committee clearly understands the point of these clauses. Obviously we anticipate a change in the way workers compensation claims will be made. We hope that there will be a shift in the emphasis of relying purely on external legal advice from consultants and firms towards claims management and other forms of claims advice, particularly in the context of the new system.

As the Committee anticipates, the new system will be quite different in many respects from the current judicially based system. Organisations, particularly employee and employer organisations as well as large employers, might require an adjustment assistance to be able to convert to the new processes. Clearly that is envisaged in the amendment. The Government does not have any agenda and, therefore, is happy with any amendment that makes the process as transparent as possible. If the Opposition and other members are prepared to amend the Opposition's amendment to make the amount more realistic and practical, the Government is happy with the general spirit contained in the amendment.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [10.35 a.m.]: On behalf of the Opposition I indicate that we are willing to amend the Leader of the Opposition's subsection (6) (b). I move an amendment to the amendment moved by the Leader of the Opposition as follows:

That the amendment be amended by inserting after the word "funds" the words ", the amount of funding to be provided" in subsection (6) (b).

**Reverend the Hon. FRED NILE** [10.36 a.m.]: The Christian Democratic Party supports both amendments. In fact I would have moved the same amendment as proposed by Hon. Dr Arthur Chesterfield-Evans. As the Government has said, this is to change the whole approach of WorkCover in dealing with claims and will take the process away from the expensive legal system. However, there cannot be a vacuum. There still has to be some way in which injured workers can obtain assistance. I understood that subclause (3) of new section 42B on page 12 would provide an alternative advisory service for claims assistance. That is very important because there must be some machinery to do that.

When we deal with industrial bills, the terminology used by organisations, which represent employers or employees, often refers to definitions that they recognise in the main bill. Bills usually contain technical definitions. For example, a group of citizens at Bankstown cannot just set up an advisory organisation. The definitions usually refer to trade unions and employer associations. I ask the Minister for clarification, as that is not specified in the bill. I have no problems with that. If the amount involved were only \$50,000, that amount would not be enough for a union to set up an advisory office and employ one person for a year. For practical reasons, the amount has to be amended.

**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) [10.39 a.m.]: The Government accepts the amendment of the Hon. Dr Arthur Chesterfield-Evans and the Deputy Leader of the Opposition. The intention is to refer to trade unions and employers organisations. There is no intention for it to be accessed by other community organisations. I am not sure how the amendment could be redrafted to satisfy the concerns of Reverend the Hon. Fred Nile but the Government believes that the amended proposition now provides more than sufficient safeguards.

**Amendment of the Hon. Dr Arthur Chesterfield-Evans to the amendment agreed to.**

**Amendment of the Hon. Duncan Gay to the amendment agreed to.**

**Amendment as amended agreed to.**

**Ms LEE RHIANNON** [10.41 a.m.], by leave: I move Greens amendments Nos 2 and 3 in globo:

No. 2 Page 12, schedule 2.2 [2], proposed section 45A (1), line 12. Insert ", with the approval of the Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales," after "may".

No. 3 Page 12, schedule 2.2 [2], proposed section 45A (3), line 17. Insert ", with the approval of the Council," after "may".

Both amendments amend new section 45A to require the WorkCover Authority to seek the approval of the Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales before it can appoint an injury management consultant. Under new section 45A as the bill currently stands the WorkCover Authority is given too much power to appoint injury management consultants. The role of the consultants has not been defined because so much in this bill is still unknown. It is important that all stakeholders have a say in who they are and what they do. The council has representatives of employers, unions and insurers. These amendments insert transparency, public scrutiny and accountability in the bill. As it stands the bill leaves too much to those who have demonstrated that they are not too good at what they do. We urge strongly that honourable members give consideration to accepting these provisions so that the method of appointing consultants works for the majority of workers. The amendments bring some clarity to this bill.

**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) [10.43 a.m.]: The Government does not support the amendments as they require the approval of the advisory council before an injury management consultant's approved status can be revoked by WorkCover. However, the Government is intending to accept an amendment to the same section to be moved on behalf of the Opposition to permit the Administrative Decisions Tribunal to review these decisions. Therefore, these amendments are unnecessary and the Government opposes them.

**Reverend the Hon. FRED NILE** [10.44 a.m.]: I would like to clarify what the bill is saying. It means that WorkCover basically will be licensing these people. It would have to assess their qualifications and license them. If the advisory council had that role, it would need the appropriate mechanism to do that. It would require a majority vote on whether those people could be licensed. That would be an unworkable mechanism. Therefore, we do not support the amendments.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [10.45 a.m.]: For the reasons outlined so succinctly by Reverend the Hon. Fred Nile, the Opposition is not in a position to support the amendments. It is intention of the Opposition to move an amendment to put in place a provision to provide consultants with some right of redress.

**Amendments negatived.**

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [10.45 a.m.]: I move Opposition amendment No. 2:

No. 2 Page 12, schedule 2.2 [2], proposed section 45A. Insert after line 28:

- (6) An injury management consultant who is aggrieved by a decision of the Authority to revoke the consultant's approval may apply to the Administrative Decisions Tribunal for a review of the decision.

This amendment ensures that injury management consultants who are aggrieved by any decision of the authority have some redress. As the bill currently stands there is no appeal mechanism available and I suspect that is what Ms Lee Rhiannon was trying to encapsulate in her amendments. Unfortunately, they did not provide for any

right of redress for injury management consultants. This amendment details measures by which an injury management consultant who is aggrieved by a decision of the authority to revoke the consultant's approval may apply to the Administrative Decisions Tribunal for a review of that decision.

**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) [10.46 a.m.]: The Government accepts the amendment.

**Amendment agreed to.**

**Schedule 2 as amended agreed to.**

### **Schedule 3**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [10.46 a.m.]: I seek to move Australian Democrats amendments Nos 1 to 6, 9 to 14, 16 to 19 and 24 to 26 in globo.

**The CHAIRMAN:** Order! There are conflicts in a number of those amendments and perhaps the honourable member should just move amendments Nos 1 and 2.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I would like to speak in favour of moving them in globo. Many are simply changing the words "medical specialist" to "case assessment team", in which case they are unlikely to conflict because they are conceptual and I do not think other honourable members will amend that word.

**The CHAIRMAN:** Order! The point is that you might be trying to amend something that has already been deleted by a different amendment and, therefore, you will be attempting to amend something that does not exist.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** If it is defeated, there will not be a problem.

**The CHAIRMAN:** Order! By all means give the one speech, but I suggest at this stage that you move amendments Nos 1 and 2 in globo.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [10.48 a.m.]: Perhaps the honourable member might just do as you suggest, Mr Chairman, and if the philosophy is not accepted he will then withdraw them subsequently or, if they are accepted, we would probably accept that we deal with them in order. I know that the honourable member is trying to help the Committee, but if he does what I have suggested, perhaps that would be more helpful.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [10.49 a.m.], by leave: I move Australian Democrat amendments Nos 1 and 2 in globo:

- No. 1 Page 13, schedule 3.1 [1], proposed section 65, line 24. Omit "an approved medical specialist". Insert instead "an expert case assessment team".
- No. 2 Page 13, schedule 3.1 [1], proposed section 65, line 28. Omit "an approved medical specialist". Insert instead "an expert case assessment team".

Amendments Nos 1 and 2 make minor word changes as part of the conceptual shift embodied particularly in amendment No. 14. My 26 amendments represent six key concepts. I will outline the major concept, which is least likely to succeed because new ideas often receive a terrible response in this Chamber.

**The Hon. Ian Macdonald:** I know about that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** No, you would not know about that. I have said many times that the American Medical Association guidelines are nonsense. They cannot be fixed by Australianising them through a committee; they are conceptually flawed. I propose to address this problem by replacing the medical assessment process. It involves a narrow, anatomical assessment that is fundamentally impractical and unjust. I would replace the medical assessment process with an expert case assessment team comprising three elements. The first team member would be from a discipline appropriate to the injury, a specialist medical practitioner, or psychologist in the case of psychological injuries, and I have a separate amendment dealing with the latter.

The second team member would be a person who specialises in rehabilitation and retraining who may come from any one of a number of backgrounds, including medical, physiotherapy or occupational therapy. That expert would report not just on a person's medical condition but on what the person is able to do. The team would take a more holistic view of the person, assessing the level of that person's ability, not just the person's disability. The third team member would be an expert in employment placement and remuneration. That expert would predict what income an injured worker with particular abilities is likely to earn in the job market in the future.

Therefore, by assessing people's injuries, their degree of ability and disability, their limitations and strengths and their future opportunities in the job market, a dollar amount appropriate to their situation may be recommended as a result of a holistic summation. A commission or a court could then use this assessment as raw material in deciding what level of compensation is appropriate. This assessment would replace the narrow, foolish and inappropriate American Medical Association guidelines. I ask that the new section on the American Medical Association guideline assessments is deleted and an alternative assessment mechanism is introduced. My series of amendments deals with that concept. I ask that honourable members take this matter seriously as it has great potential. It would give a more holistic view of injured workers by focusing on their abilities and provide a format for launching a better compensation system.

These amendments have the support of the Law Society, which is significant. The present scheme involves cross-examining doctors about the degree of injury an employee may have suffered, and this is accomplished through either much correspondence or much legal work. I ask honourable members to seriously consider these amendments. Amendments Nos 1 and 2 seek merely to change a couple of words, but the group of amendments embody the concept that I have outlined. I ask that they receive support. If they do not, I shall withdraw amendments as appropriate during the seriatim discussions today.

**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) [10.54 a.m.]: I thank the Hon. Dr Arthur Chesterfield-Evans for his contribution and for his attempt to co-operate with the Committee and assist its deliberations by moving a fairly complex set of interrelated amendments in sequence. I shall make several critical points in response to the honourable member's comments. The Hon. Dr Arthur Chesterfield-Evans lacks faith in the American Medical Association [AMA] guidelines, and so has invented a new structure. He lacks faith in the use of medical guidelines-based assessments. I have the misfortune to be debating against an expert, as the Hon. Dr Arthur Chesterfield-Evans is a medical professional who is experienced in rehabilitation medicine.

First, guidelines-based assessment is used in virtually every jurisdiction where impairment compensation-type assessments are required. We have restricted the use of guidelines as final determinants to impairment only. I make the general point that the notion of impairment as distinct from the notion of disability—they are different things—is much more consistent with the legal or workers compensation traditions in that section 66 claims have for a long time been assessed according to impairment, although the word "disability" is still used occasionally in both the relevant legislation and by those who debate the workers compensation issue in the public arena.

Second, guidelines are used in a large number of United States and Canadian jurisdictions. In fact, many jurisdictions operate schemes such as this for motor accident, public liability and other accident insurance schemes or workers compensation-type schemes. As I said last night in replying to the second reading debate, the American Medical Association guidelines are not some strange hybrid import representative of some evil trend. The fact is that the AMA guidelines—now in their fifth edition—represent, essentially, a global standard. Most medical professionals around the world accept that, if properly used, they provide the fairest, most consistent way of assessing impairment. Impairment assessment guides will obviously be used in our envisaged scheme only to assess the degree of permanent impairment of injured workers. I believe they will succeed much better than the table of maims and the judicial process that is required to apply that table. Using objective clinical evidence, the guides seek to provide consistency and a basis for assessing each injury and degree of impairment. The guides establish, on a scientific basis—they have been developed by some of the best medical minds in the world—the relative impact of different injuries on human functioning and capacity.

By contrast, the relativity schedules in our table of maims pay little regard to the impact of different injuries on the individual. Relatively minor injuries can therefore receive disproportionate compensation under the current scheme, while the guidelines-based system—which is much more scientific—focuses on the extent to which an individual's anatomy is impaired. As the Hon. Dr Arthur Chesterfield-Evans said, these matters will



obviously be compensable through the guidelines. At present the guides reduce an injury to a numerical score—in the crudest sense—which is then taken as a matter of policy to represent a level of eligibility for permanent impairment payments. If that appears to be an offensive way of proceeding, the application of the table of maims is much more offensive. It involves a somewhat arbitrary approach. It is less consistent, less fair and subject to wide-ranging interpretation and misinterpretation simply because it is not based in science. It is simply an arbitrary listing.

The proposed amendments aim to replace the assessment of medical disputes by approved medical specialists, as provided for in the bill, with an assessment team—that is the balance of the Hon. Dr Arthur Chesterfield-Evans's amendments—comprising three medical or medical-related experts. The member's proposal empowers expert case assessment teams to recommend compensation or a structured settlement that is considered applicable to the worker. It is unclear how this proposal would relate to the arbitration process for actually determining whether there is a basis for awards under current or future legislation. In addition, the amendments appear to introduce the notion of assessing disability. Many years ago the New South Wales workers compensation jurisdiction moved away from relating entitlements to concepts of disability and towards impairment and incapacity.

Under these amendments the assessment team would include experts in rehabilitation training and job placement as well as a medical specialist. Apparently such a three-expert team would be required for all referred medical disputes irrespective of whether all three assessments aspects were necessary. In fact, most medical disputes requiring assessment are expected to involve a degree of impairment relative to the required lump sum payment. It may be that the proposed expert team arrangement seeks to link the dispute resolution forum with injury management. However, whilst sharing concerns for effective injury management, the Government considers it is more appropriately dealt with under the specific injury management provisions of the Act. Those provisions require active participation by employers, insurers and workers. Furthermore, the bill includes special and new provisions for the fast resolution of these types of disputes. For that reason these amendments, and all the other amendments to be moved by the Hon. Dr Arthur Chesterfield-Evans, are opposed.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [11.04 a.m.]: The Opposition will not support the amendments moved by the Hon. Dr Arthur Chesterfield-Evans regarding expert case assessment teams. It is important to refer to the position the Opposition took during the second reading debate of not opposing the operational aspects of the bill. However, our concerns most certainly rested with the transparency of the legislation and in particular the opportunity for this House to maintain its responsibility to have some future oversight and review of the legislation—indeed, of the entire workers compensation system. It is extremely important to make that clear at this stage so that honourable members are aware that when the Opposition does not speak to a number of these amendments during the course of this debate it is simply because our position has always been one of comparing the operational aspects of the bill with its transparency. That is consistent with the amendments the Opposition proposes.

The Parliament must have an opportunity to debate the reforms beyond the passage of the Committee stage and, indeed, beyond the passage of the third reading debate whenever that occurs over the next couple of days. We are concerned that the Parliament has limited opportunity to be involved in the assessment or consideration of the WorkCover guidelines as spelled out in the legislation. The Parliament has had absolutely no opportunity to be involved in the creation of the new Workers Compensation Commission. The Government may get something wrong in setting the rules. This Parliament is responsible for the success or otherwise of this legislation.

The medical assessment guidelines that the Hon. Dr Arthur Chesterfield-Evans addresses with these amendments and the overarching question of whether the guidelines and the approved medical specialist model proposed by the Government should be replaced by an expert case assessment team will be the subject of later debate in another significant amendment. However, these amendments lead towards those reforms. Our position is consistent: Quite simply, these amendments and the creation of an expert case assessment team would cause some reform of the operational aspects of the bill. The Opposition is not prepared to support the amendments.

**Reverend the Hon. FRED NILE** [11.07 a.m.]: To repeat a matter I raised during the second reading debate, new section 65 (3) states in part, "has been assessed by an approved medical specialist". The amendment of the Hon. Dr Arthur Chesterfield-Evans would replace that with "expert case assessment team". The note on page 15 states in part:

... those psychological injuries will be assessed together as one injury ...

I asked earlier how, if the injury was psychological, the medical specialist would assess the psychological injury? I ask the Government to explain whether the term "medical specialist" is broad enough to cover specialists in different fields? Does the term "medical specialist" include "psychologist"? The wording is not clear because later the bill provides for psychological injuries to be assessed together. I share the concern of the Opposition and the Government about the amendments moved by the Hon. Dr Arthur Chesterfield-Evans regarding the expert case assessment teams. It raises issues as to how they are appointed, how many are appointed, how many are on a team, who they are, and how they resolve their differences.

If members of the team do not agree, how are the differences within the team resolved? While we are considering costs, it would seem that a team would increase the costs of the scheme. The Christian Democratic Party does not support the amendments. I would seek clarification as to where the qualified psychologist fits in. Will the Government give an assurance that it will persevere with the Federal Government for tax exemptions of structured payments, which is how WorkCover should operate. Any compensation awarded should be spread over a period of time, rather than being awarded in a lump sum which can be misused by the injured worker, and/or his or her relatives and friends.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.11 a.m.]: The Minister was correct when he said that the American Medical Association [AMA] guidelines are more sophisticated than the table of maims. His statement that the table of maims is absolutely primitive is also true, but so are the AMA guidelines. The Minister is obviously aware of the difference between an impairment and a disability. But he is making a terrible mistake conceptually—and this is exactly the problem—when he says that, traditionally, compensation is awarded on the basis of impairment rather than disability. Impairment is static, like the table of maims, like the AMA guidelines. I advocate a holistic assessment that encompasses disability, and disability encompasses ability. A classic example is that if I am shortsighted and I take off my glasses I have an impairment. If I put my glasses on I have minimal disability because my glasses enable me to have near-normal vision. If I was compensated for my impairment I would get some money, but I would not need it when I put on my glasses. Disability is the critical issue, and that is what should be assessed.

Under the system proposed by the Minister, impairment, not disability, will be assessed. But it is the disability, not the impairment, that must be assessed because moving beyond the disability to the ability is critical. That is what my team would try to assess. The Minister is being somewhat precious when he says that the table of maims is used broadly in America. It is not used in this context, and the American Medical Association does not recommend it for use in this context. It is very popular with the insurance industry because it gives a simple number that relates to simple dollars. Its simplicity is what people like, but its effect on social justice and restitution of a decent life for injured workers is quite poor.

The Minister said that the table of maims is well recognised, but it is ubiquitous. Whether it is recognised for its performance is another question. The Minister has informed us that a team will adapt the tables for Australia. Although he is saying they are of world standard and recognised throughout the world he wants to fiddle with them, and this committee, in which he has a great deal of faith, will adapt them for Australian use. He cannot gild the lily. Although the table of maims may be a benchmark, it is not fixable. Reverend the Hon. Fred Nile expressed concern about the appointment of the team and how disagreements within the team would be resolved. Amendment No. 14 deals with how the team will be appointed, how the team will handle a disagreement, and how the appeals mechanism will work. Details of how the team would fit in are in my briefing note, but perhaps I neglected to mention that in the second reading debate.

The team would produce a holistic view of the person's ability and a recommendation of what it is worth in practice, which would very much facilitate the decision-making process. The format would contain a recommendation for finance with a realistic assessment of the injured person's capability. It would solve a whole lot of problems. An assessment team would not add to costs because to get to that point without using such a team would involve a whole lot of experts and a great deal of bickering. I cannot agree that it would increase costs. It would provide a more realistic assessment and a major conceptual leap forward in the process of restitution for injured workers. I am disappointed with its lack of support.

#### **Amendments negated.**

**Ms LEE RHIANNON** [11.15 a.m.], by leave: I move Greens amendments Nos 4 to 9 in globo:

No. 4 Page 14, schedule 3.1 [1], proposed section 65A (1), lines 2-4. Omit all words on those lines. Insert instead:

- (1) Compensation is payable under this Division in respect of permanent impairment that results from a psychological injury.

- No. 5 Page 14, schedule 3.1 [1], note to proposed section 65A (1), line 5. Omit "secondary".
- No. 6 Page 14, schedule 3.1 [1], note to proposed section 65A (1), line 8. Omit "primary".
- No. 7 Page 14, schedule 3.1 [1], proposed section 65A (2), lines 9-12. Omit all words on those lines.
- No. 8 Pages 14 and 15, schedule 3.1 [1], proposed section 65A (4), lines 22 on page 14 to line 8 on page 15. Omit all words on those lines.
- No. 9 Page 15, schedule 3.1 [1], proposed section 65A (5), lines 9-15. Omit all words on those lines.

These amendments deal with removing the distinction between primary and secondary psychological injuries. They affect new section 65A and delete the artificial distinction between primary and psychological injuries by removing all references to the words "primary" and "secondary". These amendments will prevent what could be a lawyers' picnic in the appeals court. A great deal of concern has been expressed about the way in which all areas use or abuse the system, and this is an area that could be tightened up. Surely we should be able to reach agreement on it. As the bill currently stands, many long and painful arguments will be had about causation. Obviously, such arguments will be difficult to resolve.

Legal arguments would cause considerable additional suffering. Imagine sitting in court and trying to work out whether your psychological or physical injury should be at the top. Would you even know the difference? I can imagine someone having to put up with endless arguments about whether a psychological injury is primary or secondary when all the person wants is a fair go, the opportunity to move forward and a chance to rebuild his or her life after the shattering experience of being injured at work. I draw the attention of honourable members to new section 65A (4), which deals with a very serious matter that could be easily tied up. It states:

If a worker receives a primary psychological injury and a physical injury, arising out of the same incident, the worker is only entitled to receive compensation under this Division in respect of impairment resulting from one of those injuries ...

It is very clear that it will be a toss-up, which would involve many long arguments about what is primary and what is secondary. Under new section 65A (4) it will be necessary for an injured worker to choose a lucky winner. It is difficult to say what is primary when one is dealing with so many cases. This aspect of the bill would be unfair to nurses, police officers, ambulance drivers and teachers, who are at the forefront of sustaining combined injuries. These workers often incur psychological injury as a direct result of interrelationship experiences at work.

The amendments will ensure that compensation is payable for permanent impairment that results from a psychological injury. The Government claims it is looking for a fairer, faster and simpler system. New section 65A (4) would produce a slower, less fair and more complicated system that would be in no-one's best interests. If the Government wants to stick to its rhetoric and ensure that it maintains some semblance of reality it should support us on this one. We would then move closer to a fairer Workers Compensation Legislation Amendment Bill.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [11.18 a.m.]: The bill already substantially improves lump sum coverage for psychological injuries by the introduction of a new benefit for permanent impairment that results from a primary psychological injury. By comparison, the list of injuries covered under the current section 66 table of disabilities does not include psychological injuries. The proposed amendment would remove any restriction on permanent impairment lump sum benefits for injuries of a psychological nature. Such an expansion of the range of benefits would not be responsible at this stage, in view of the cost restraints. The amendments are opposed.

#### **Amendments negatived.**

**Ms LEE RHIANNON** [11.20 a.m.]: I will not move Greens amendment No 10. I move Greens amendment No. 11:

- No. 11 Page 15, schedule 3.1 [2], proposed section 66A, line 33. Insert "that previously claimed" after "impairment".

This amendment removes discrimination against workers who make light of an injury which later proves to be serious. We have probably all known people who have found themselves in this situation. Sometimes an incident will occur at work. Most people are not interested in being sick and taking time off work; most people value their health. They are inclined to think they have just jinked their back or hurt their arm, and get on with the job. But in many instances they find later that they have suffered an injury, perhaps a quite serious injury.

We need to cover such situations. This amendment will insert into new section 66A (1) the words, "that previously was claimed" after the word, "impairment". It provides that important safeguard. The last three lines of new section 66A (1) as drafted would discriminate against a worker who makes light of an injury which later is revealed to be much worse.

It is unreasonable to not allow further compensation claims where the claim is for a previously claimed injury. I can understand that some members might think that this would allow spurious claims to be made, but there is protection against that possibility. As we know, in the majority of cases people do not make false claims. Provision needs to be made for people who find themselves in that situation. It can often be in people's nature to make light of injury. Many people do not want to appear as if they are whingeing or are soft if they complain about injury. That is very much part of the Australian culture. We obviously have a variation in pain thresholds but, in most cases, people get on with the job. However, if they find that they literally cannot get on with the job, they need the safeguard. It is important and fair that workers should be allowed to claim compensation for an injury that they later realise is serious. The essence of this amendment is to put in place a safeguard that will allow workers to claim for an injury that they later realise is serious. I commend the amendment to the Committee.

**The Hon. PETER BREEN** [11.22 a.m.]: This is a sensible amendment. An agreement will often be registered and the worker may not realise that there will be complications in what appeared at first to be a simple injury. Often people have multiple injuries and is not possible to determine exactly which injury is causing the problem. The amendment would deal with the problem, and I commend it to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [11.23 a.m.]: The amendment seeks to add words to the provision relating to registration agreements for permanent impairment. The bill specifies that no additional impairment compensation is payable where an agreement for compensation in respect of that impairment has been registered. That is similar to existing section 66A. The amendment, though not thoroughly clear, appears to be seeking to specify that the impairment compensation referred to means impairment that is the subject of a previous claim. The wording in the context of the provision in the current bill already makes that sufficiently clear. The amendment is opposed as unnecessary.

#### **Amendment negatived.**

**Ms LEE RHIANNON** [11.24 a.m.]: I move Greens amendment No. 11A:

No. 11A Page 17, schedule 3.1 [8]. Insert after line 31:

- (2A) For the purposes of subsection (1), if a worker receives successive injuries that result in a degree of permanent impairment, where:
- (a) the earlier injury or injuries comprise:
    - (i) a disease which is contracted by the worker (as referred to in paragraph (b) (i) of the definition of *injury* in section 4), or
    - (ii) the aggravation, acceleration, exacerbation or deterioration of a disease (as referred to in paragraph (b) (ii) of the definition of *injury* in section 4), and
  - (b) the later or latest injury comprises the aggravation, acceleration, exacerbation or deterioration of the disease referred to in paragraph (a) (i) or (ii), as the case requires, and
  - (c) the degree of permanent impairment resulting from the earlier injury, or all of the earlier injuries, is not greater than that prescribed as referred to in subsection (1),

the degree of permanent impairment resulting from the later or latest injury is taken to be the degree of permanent impairment resulting from all of those injuries.

The intention of the proposed amendment is as follows. Thresholds for pain and suffering as described in section 67 associated with diseases of gradual process should be calculated on the total—that is, a cumulative, permanent impairment. For example, the regulations referred to in section 67 supposedly set a permanent impairment threshold of 10 per cent. Take the example of a worker by the name of Mary, who is suffering from a disease of gradual process. In 2002 she is awarded 6 per cent for permanent impairment; in 2006 she is awarded an additional 5 per cent for permanent impairment. We wish to amend the Act so that she is above the pain and suffering threshold—which, for the sake of this example, is 10 per cent. She has now an accumulated permanent impairment of 6 per cent plus 5 per cent.

The Greens understand that section 68B is worded in such a way as to prevent Mary from receiving 6 per cent permanent impairment compensation in 2002 and then 11 percent in 2006, which would be double dipping. That is fine. The Greens are concerned that an unintended outcome of section 67B would be that Mary would not get compensation for pain and suffering, even though her permanent impairment had crossed the threshold. As I said, the clear intention of the proposed amendment is that thresholds for pain and suffering associated with disease of gradual process should be calculated on the total permanent impairment. Gradual process is something that needs to be cleaned up in the Act and we believe that this amendment makes provision for that. I commend the amendment to the Committee.

**The Hon. PETER BREEN** [11.26 a.m.]: This amendment raises the problem of permanent impairment. We do not know how it is going to operate. It is true that if a worker has a particular injury that becomes exacerbated or develops over time and is in need of reassessment, clearly there needs to be a reassessment of the total permanent impairment, not simply the impairment on the previous occasion. On that basis I commend the amendment to the Committee.

**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) [11.27 a.m.]: The Government does not support the amendment. It relates to the provision in the bill that prevents proceeding in the commission merely to obtain formal entry of an award where permanent impairment compensation has already been agreed on. The amendment seeks to insert into that provision a complicated provision dealing with cases where a worker has had a series of injuries, comprising aggravation or deterioration of a disease. The amendment would deem the degree of impairment resulting from the last of those injuries to be the degree of impairment resulting from them all. Various anomalies and unanticipated consequences could arise from an arrangement. For example, earlier employers would or could become liable for a higher level of compensation than is warranted by the impairment actually caused while the worker was in their employ. Specifically, they could become liable for part of the worker's impairment caused during later employment. Such issues of liability need to be thoroughly examined before a proposal of this kind could be adopted.

I will attempt to deal with the hypothetical question that Ms Rhiannon put to the Committee. In the case of someone who has received an award based on a degree of impairment of, for example, 15 per cent, it would not be possible to see how that person could be subsequently awarded payment for an impairment of 6 per cent since the original payment was for a permanent impairment. One can only assume that the honourable member means an additional 6 per cent whole-of-body deterioration. That would mean that the worker's impairment would be 21 per cent and the worker would be eligible for an additional payment, representing the deterioration in the illness. That is similar to the current operation of the workers compensation scheme. From the point of view of overly complicating the question of liability between employers for a deteriorating illness, but also in relation to the specific hypothetical case presented to the Committee, that is not how the scheme would work. Nor could it work in that way. Logically, the worker was permanently impaired at one point in time. If she has suffered further deterioration, she will be even more permanently impaired subsequently and she will be entitled under the scheme to an additional payment representing the difference between her original impairment and the new impairment.

**Amendment negatived.**

**Ms LEE RHIANNON** [11.30 a.m.]: I move Greens amendment No. 12:

No. 12 Page 18, schedule 3.1 [14], line 23. Omit all words on that line. Insert instead:

**68 External removable aids or appliances**

When determining the degree of permanent impairment, the extent to which the impairment may be reduced or limited by an external removable aid or appliance is to be disregarded.

This amendment would retain existing section 68 (2) in the Act so that the use of a medical prosthesis does not remove the rights for lump sum compensation. Removal of the existing section implies that a worker who loses, for example, a limb, the function of which is replaced by an artificial limb, would then not be able to receive lump sum compensation in respect of that loss. We believe this is manifestly unfair and unreasonable. We seek support for the amendment.

**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) [11.31 a.m.]: Again, it is not the intention of anything under this set of arrangements to include, for the purposes of an impairment assessment, any prosthesis or artificial device used by an injured worker. The Hon. Dr Arthur Chesterfield-Evans gave a traditional example of the difference between disability and impairment. Impairment measures the anatomic impairment of the individual. Therefore, artificial aids and devices that the person may be able to use are not taken into account when assessing the degree of impairment. There is no sense in which people would be unfairly discriminated against because there is the potential for those kinds of aids to be used.

If I could do a small advertisement for the whole strategy behind these reforms: In the case of impairment, the exact set of circumstances that Ms Lee Rhiannon outlined frequently happens in common law. People cannot gain further assistance for new technology in relation to prostheses and things that can assist them to overcome a disability as a consequence of their impairment because the awards have already been made. The present system does not recognise the potential for future changes, whereas the statutory scheme properly operating will be able to compensate people in an ongoing way and allow them to overcome their impairments with the improvements in medical and prosthetic technology. I oppose the amendment because it is unnecessary.

**Amendment negatived.**

**Ms LEE RHIANNON** [11.33 a.m.], by leave: I move Greens amendments Nos 14 and 15 in globo:

No. 14 Pages 21 and 22, schedule 3.1 [18], proposed section 69A (1)-(4), line 10 on page 21 to line 8 on page 22. Insert "of binaural hearing loss" after "6%" wherever occurring.

No. 15 Page 21, schedule 3.1 [18], proposed section 69A. Insert after line 15:

- (2) The amount of permanent impairment compensation payable for 100% permanent binaural hearing loss is \$65,000.
- (3) The amount of permanent impairment compensation payable for less than 100% permanent binaural hearing loss is the proportion the degree of impairment bears to compensation payable in respect of 100% impairment.
- (4) Compensation is payable for pain and suffering for permanent binaural hearing loss under section 66 if the amount payable under that section for boilermakers deafness is \$10,000 or more.
- (5) When determining the compensation payable for pain and suffering, all awards for permanent hearing loss are to be aggregated.

The essence of amendment No. 14 is to replace "6 per cent" with "6 per cent of binaural hearing loss" every time it appears. This is intended to improve the clarity of the section and to ensure that there is no potential for confusion or misunderstanding. As it presently stands, it is unclear whether the 6 per cent refers to binaural hearing loss or whole-of-body impairment. Amendment No. 15 inserts in section 69A further details as to the assessment of hearing loss. As written, the section would require workers suffering industrial deafness to obtain a double assessment. One assessment would be for the hearing loss and the second would be for the whole-of-body impairment. The approach taken in this clause is not consistent with the whole-of-body approach in the remainder of the bill. The amendment seeks to bring it into line with the rest of the bill and to reduce the amount of assessment required of the worker. If the Government will not support the amendment, I would appreciate hearing the Minister's interpretation of the apparent contradiction with the consistent whole-of-body approach in the rest of the bill. I look forward to the comments of the Minister on the matter.

**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) [11.35 a.m.]: The Government's intention has not been to change the way in which hearing loss is assessed within the workers compensation scheme. As Ms Lee Rhiannon would be aware, the assessment procedure has changed over the last few decades. I think there is consensus between the stakeholders—we have talked a lot about the stakeholders in this debate—about the way in which hearing loss is assessed. I take her point that in a technical sense in relation to whole-of-body assessment there is a certain attractive logic to her amendment. However, section 69A (5) of the Workers Compensation Act has provided for some years that for the purposes of the 6 per cent threshold for hearing loss claims the loss of hearing is to be determined as a proportionate loss of hearing of both ears even if the loss is in one ear only. I am advised that the existing provision is a clear reference to binaural assessment.

Amendment No. 15 seeks to make a number of changes which the Government does not accept. It is drafted in such a way—although I am sure it is not the intention—that it could give rise to a duplication and the potential for double dipping in relation to pain and suffering lump sum payments for industrial deafness. Any

proposal along these lines would require careful design to avoid unintended consequences. The amendment also seeks to treat impairment lump sums for hearing loss differently from those for other injuries by specifying the relevant maximum amount in the legislation. Based on significant consultations—not only in the last round of consultations but over some years—the bill includes regulation powers covering that purpose. The approach in the proposed amendment may lead to unfair anomalies.

**Amendments negatived.**

**The Hon. IAN COHEN** [11.38 a.m.]: I will not move Greens amendment No. 16. I move Greens amendment No. 17:

No. 17 Page 22, schedule 3.1 [22], proposed section 73, lines 25-30. Omit all words on those lines.

This amendment would remove the ability of WorkCover to require specific training of a medical practitioner in order for a permanent impairment medical certificate to be obtained and the costs to be reimbursed. The amendment would delete paragraphs (a) and (b) of new section 73 (1). This new section would restrict reimbursement for medical certificates and examinations to doctors with the WorkCover qualifications. There is a strong likelihood that many good doctors would not bother getting approval from WorkCover: for example, a leading hand specialist who is too busy to go to a trivial WorkCover course. It also raises the question: If a practitioner is properly qualified and has completed many years of university and professional training, why would WorkCover require anything else? This would clearly lead to practitioners losing their independence and somehow being controlled or captured by WorkCover. I commend Greens amendment No. 17 to the Committee.

**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 a.m.]: I am not clear on what the honourable member's concern is. Simply put, we expect those operating in the system to be prepared to be certified in order to issue certificates with the required legal status. It seems to me that a hand specialist, or anyone else wanting to be involved in making assessments for WorkCover, would be well advised to undertake any appropriate certification. It would not be a trivial certification and obviously would enhance rather than detract from the hypothetical hand specialist or any medical practitioner's relevant and excellent qualifications. Obviously, were this amendment, and the amendment not moved by the Hon. Ian Cohen, carried in the context of medical reports, the training of doctors in the prescribed impairment assessment methods would be supported. Under that provision, the cost of supporting such medical reports is payable by the employer insurer. As such, it is reasonable to expect that the report relates to assessment carried out using the correct technique.

**The Hon. Dr PETER WONG** [11.41 a.m.]: I ask the Minister to clarify what is meant by new subsection 73 (1) (a), which states that a medical practitioner has to complete such training as the authority may require. Does that mean that there is a special course that medical practitioners must undertake? The Hon. Ian Cohen referred to the hypothetical hand specialist. That specialist would be too busy to attend courses. Would the Government recognise the present qualification and declare that the specialist had fulfilled the training criteria, rather than the other way round?

**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) [11.41 a.m.]: I will seek advice as to the description of training programs. Clearly the intention is that relevant training in the use of the WorkCover guidelines is the basis to assessment; it is contingent upon the specialist, no matter how well qualified he or she otherwise is, being familiar with the use of guideline-based assessment and the specific guidelines that WorkCover will evolve. They will be based broadly on relevant global standards.

This provision refers to training in the use of WorkCover guidelines; it is not meant to be stronger than that. As to how much time is involved in undertaking the courses, it is fairly widely accepted that even the most eminent professionals require regular updating of their knowledge and skills. Barristers, engineers, solicitors and other professionals are required to undertake additional training. As a general principle, the medical practitioners would be providing a service to the scheme and as that service is paid for they should be able to use their specialist knowledge in compliance with the WorkCover guidelines. The courses would not be onerous; they would perhaps take up half a day to two days.

**The Hon. Dr PETER WONG** [11.43 a.m.]: I am trying to be helpful. I understand that the Hon. Ian Cohen and the Minister said that for a medical practitioner to assess a case properly he or she needs to have a

certain type of training. However, most medical practitioners, including hand surgeons, could read through the guidelines in about 10 minutes rather than go to a training course. Would it not be better to state that the medical practitioner had completed such training as "recognised" by the authority rather than as "required" by the authority. If they had done training, and that was recognised, that should be sufficient. How many hand surgeons would be able to take two days off to attend a course? Very few. The key words are "recognised training", rather than "required training".

**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) [11.44 a.m.]: I cannot give the Committee precise numbers, but I will prevail on WorkCover to provide those numbers before the day is out. A large amount of work is carried out by hand surgeons. If one considers the epidemiology of industrial accidents, regrettably one would find that there are large numbers of hand, finger and lower arm injuries. A large percentage of all traumatic hand surgery would be covered by WorkCover, because those injuries result from industrial accidents. I understand that the Hon. Dr Peter Wong is trying to be helpful but I make it clear that the medical practitioners, as eminent as some of them may be, will be expected to familiarise themselves with, and be trained in, the guidelines if they want to participate in the scheme.

**Amendment negatived.**

**Schedule 3 agreed to.**

#### **Schedule 4**

**Ms LEE RHIANNON** [11.46 a.m.]: I move Greens amendment No. 18:

No. 18 Page 25, schedule 4.1 [1], lines 5-14. Omit all words on those lines.

This amendment addresses the vexed issue of common law. The amendment brings some consistency to the bill. Honourable members have been told that common law matters had been referred off to Justice Sheahan, but this point is still hanging around. Common law is central to the workers compensation legislation and was debated earlier. In England in the nineteenth century workers began to fight for their right to compensation for work-related injuries. A workers compensation scheme is not seen as the perfect way to deliver assistance for injured workers, but it has always been regarded as a fundamental right for people to be able to go to common law to get some compensation for injuries that they have suffered. This amendment deletes new section 151D (1), which relates to time limits for the commencement of court proceedings. The Greens have obvious concerns about this, because it anticipates Justice Sheahan's inquiry on common law matters.

The Greens would certainly not want to see the Government lose even more credibility with the union movement or with the general public by prejudicing the outcome of the Sheahan inquiry. We would be surprised if the Government did not support this amendment, because at the briefing on Tuesday about the progress of the bill we were told by members of the Minister's staff that all common law references had been deleted from the bill. I understand that there may often be an oversight. Therefore, I trust that the Government will see its way clear to support the amendment so that the bill is in accordance with what the Government has told us and that it will in no way anticipate Justice Sheahan's inquiry on common law matters.

**Reverend the Hon. FRED NILE** [11.50 a.m.]: I would just like to clarify a point. In the new section that the amendment seeks to delete, the only reference to common law is in the heading, which is part of the Workers Compensation Act 1987. Because issues relating to workers common law claims have been referred to Justice Sheahan, parts of the original bill have references to common law. This reference is merely a heading from the original 1987 Act, not a heading in this bill. The relevant wording here is "Insert section 145D".

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [11.51 a.m.]: This amendment seeks to delete the provision that suspends the limitation period for common law proceedings during the period where such a claim is referred for voluntary assessment in the commission. The provision for suspension of the limitation period is reasonable in the context of those assessments. In relation to the specific point made by Ms Lee Rhiannon, the measure is structured so as to ensure that injured workers who choose to use the arbitration services of the new commission are not disadvantaged by the time limit expiring while the arbitration is taking place. It stops the clock ticking. It is purely voluntary.

**Ms LEE RHIANNON** [11.52 a.m.], by leave: The Greens have a number of other amendments that also refer to the common law. I should have moved them in globo earlier, and I apologise for not having done



so. Consequently, with the leave of the Committee now, I move Greens amendments Nos 18, 28, 33, 34, 36, 37, 38, 44, 48, 51, 52, 54, 55, 57, 69, 82, 83 and 85 in globo:

- No. 18 Page 25, schedule 4.1 [1], lines 5-14. Omit all words on those lines.
- No. 28 Page 33, schedule 4.2 [11], proposed section 105 (2), lines 25-27. Omit "except for the purposes of and in connection with the assessment of a work injury damages claim under Part 6 of Chapter 7".
- No. 33 Page 37, schedule 4.2 [16], proposed section 250, lines 7 and 8. Omit all words on those lines.
- No. 34 Pages 37 and 38, schedule 4.2 [16], proposed section 250, line 28 on page 37 to line 12 on page 38. Omit all words on those lines.
- No. 36 Page 39, schedule 4.2 [16], proposed section 254 (1), line 2. Omit "Neither compensation nor work injury damages are". Insert instead "Compensation is not".
- No. 37 Page 39, schedule 4.2 [16], proposed section 254 (2), line 9. Omit "or work injury damages".
- No. 38 Page 39, schedule 4.2 [16], proposed section 254 (2), line 10. Omit " or damages".
- No. 44 Page 43, schedule 4.2 [16], proposed section 260 (5), line 15. Omit "or work injury damages".
- No. 48 Page 45, schedule 4.2 [16], proposed section 262, lines 5-8. Omit all words on those lines.
- No. 51 Page 53, schedule 4.2 [16], lines 1 and 2. Omit "and work injury damages".
- No. 52 Page 53, schedule 4.2 [16], proposed section 281, lines 4 and 5. Omit "or work injury damages".
- No. 54 Page 53, schedule 4.2 [16], lines 23 -25. Omit " or damages" wherever occurring.
- No. 55 Page 54, schedule 4.2 [16], proposed section 281 (6), lines 5 and 6. Omit all words on those lines.
- No. 57 Page 54, schedule 4.2 [16], proposed section 282 (1)(d), lines 19-21. Omit all words on those lines.
- No. 69 Pages 66-68, Schedule 4.2 [16], proposed Part 6, line 6 on page 66 to line 15 on page 68. Omit all words on those lines.
- No. 82 Page 77, schedule 4.2 [16], proposed section 337 (1), line 27. Omit "or work injury damages matter".
- No. 83 Page 77, schedule 4.2 [16], proposed section 337 (1), line 30. Omit "or work injury damages".
- No. 85 Page 79, schedule 4.2 [16], proposed section 340, lines 8-12. Omit all words on those lines. Insert instead:

This Division applies to costs payable by a party in relation to a claim for compensation.

My earlier comments apply to these amendments. They delete all references to common law matters in the bill. I have already spoken on this matter so I shall not take up the time of the Committee further.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [11.53 a.m.]: The point I made about the voluntary use of the arbitration services of the new commission is relevant. It is voluntary and gives workers the advantage of using the arbitration services during this period.

**Ms LEE RHIANNON** [11.54 a.m.]: I said that we had concerns that this may be anticipating the Sheahan inquiry. I ask the Minister to address that concern because it is relevant to this aspect of the debate and would be useful information for honourable members.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [11.55 a.m.]: The Sheahan inquiry covers other matters. These amendments are merely providing the ability for injured workers to choose to use the arbitration services of the new commission during this period.

**The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin)**: Order! The question may be put on all amendments for which leave was granted to Ms Lee Rhiannon to move in globo, with the exception of amendment No. 69, which is in conflict with an amendment proposed to be moved by the Australian Democrats.

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

**The Committee divided.**

**Ayes, 5**

Mr Breen  
 Mr Cohen  
 Dr Wong  
*Tellers,*  
 Dr Chesterfield-Evans  
 Ms Rhiannon

**Noes, 29**

Ms Burnswoods	Mr M. I. Jones	Dr Pezzutti
Mr Colless	Mr R. S. L. Jones	Mr Ryan
Mr Della Bosca	Mr Lynn	Ms Saffin
Mr Dyer	Mr Macdonald	Ms Tebbutt
Ms Fazio	Mr Moppett	Mr Tingle
Mrs Forsythe	Mrs Nile	Mr Tsang
Mr Gallacher	Reverend Nile	Mr West
Miss Gardiner	Mr Obeid	<i>Tellers,</i>
Mr Gay	Mr Oldfield	Mr Jobling
Mr Harwin	Mr Pearce	Mr Primrose

**Question resolved in the negative.**

**Amendments negatived.**

**Progress reported and leave granted to sit again.**

**Pursuant to sessional orders business interrupted.**

## QUESTIONS WITHOUT NOTICE

### WORKERS COMPENSATION PREMIUM DISCOUNT SCHEME

**The Hon. MICHAEL GALLACHER:** My question is directed to the Minister for Industrial Relations. Why has the WorkCover Authority failed to provide employers with the details of the appointed premium discount advisers for the premium discount scheme given that the scheme will be introduced for employers tomorrow, Saturday 30 June? How does the Government expect employers to make the necessary arrangements for the scheme when they do not even know who the premium discount advisers are?

**The Hon. JOHN DELLA BOSCA:** I thank the Leader of the Opposition for his very good question, which appears to assume that he supports the notion of the premium discount scheme and the policy and logic behind it. It confronts one of employers' great frustrations regarding the workers compensation scheme. Like the Leader of the Opposition, I have travelled around the State in the past year or so and talked to a wide variety of employers. They have expressed great frustration that the current method of calculating premiums does not allow employers to overcome the history of their industry. Employers are stuck with the prevailing tariff rate because of an industry classification resulting from the history of a particular enterprise. For example, a mistake may cause injuries, which lead subsequently to much higher premiums that employers will be stuck with for a long period thereafter. As a result of their frustration, many employers have voted with their feet and used various methods to reduce artificially or evade paying legitimate premiums, which has led to extra enforcement compliance costs and expenses. The premium discount scheme will enable employers to overcome their industry's history and make occupational health and safety changes—

**The Hon. Michael Gallacher:** When will employers find out?

**The Hon. JOHN DELLA BOSCA:** I will get to that.

**The Hon. Michael Gallacher:** What is the relevance?

**The Hon. JOHN DELLA BOSCA:** This is very relevant. The premium discount scheme is welcomed by a wide variety of employers because it will allow them to overcome this annoying problem. No matter what they have done in the past regarding occupational health and safety arrangements and risk and injury management in the workplace, employers have been stuck with the existing premiums. We are allowing employers who want to make a change and break out of that cycle to seek certified advice about how to change their workplace so as to reduce future risks. Their efforts will then be taken into account when calculating their premiums. The personnel required under the scheme will receive training and certification. Settling-in arrangements associated with the new scheme will obviously place pressure on WorkCover.

**The Hon. Michael Gallacher:** Some oversights.

**The Hon. JOHN DELLA BOSCA:** There are no oversights. The names, contact emails, addresses and telephone numbers of all appropriate personnel will appear on the WorkCover web site next week so that employers can participate in the WorkCover premium discount scheme immediately upon its inception.

### CLOTHING OUTWORKER PROTECTION

**The Hon. RON DYER:** My question without notice is directed to the Minister for Industrial Relations. Will the Minister report on the progress of the Government's clothing outworker strategy?

**The Hon. JOHN DELLA BOSCA:** I thank the honourable member for his ongoing support of ethical principles of employment that underpin the Government's clothing outworker strategy. Recently I informed honourable members of the commencement of the Government's clothing outworker strategy, to be conducted during the next three years, to improve protection for clothing outworkers. As part of that strategy a clothing workers entitlements task force is being established to ensure that fashion houses and clothing manufacturers are observing their basic employee obligations relating to workers compensation, superannuation and the keeping of wage records. The task force is part of the Government's commitment to end the exploitation of clothing workers in New South Wales. Work underpinning the strategy is already under way in the Department of Industrial Relations.

Last month a business seminar for accountants who service small and medium-size clothing businesses was held in Bankstown. Industrial inspectors and officers of the Australian Taxation Office were present to explain current employment and taxation obligations on clothing industry employers. I am pleased to report on the success of this much-needed initiative. It is important to recognise that combined the 25 accountants present at the seminar assist several hundred companies, many of which are in the clothing industry. The success of the Bankstown seminar has led the inspectors responsible for the clothing industry to plan similar seminars at Campbelltown, Liverpool and Fairfield in coming months.

While education is a primary focus of the department's activities, there was a continuing role for ongoing workplace inspections and prosecution of non-complying employers. Two cases finalised during May highlight the progress made in delivering the Government's commitment to clothing outworkers. In the first case, a 60-year-old female clothing outworker received nearly \$8,500 in long service leave from her former employer. The worker had been employed by two separate clothing companies for more than 36 years. Upon her retirement, the employer refused to recognise that period of service. The worker lodged a complaint with the Department of Industrial Relations early in 2001. As very few records existed, the department relied upon a number of statements from family members and friends to corroborate the complainant's version of events. Faced with that evidence the employer has to now pay the worker her full entitlement to long service leave.

In a second matter, a clothing outworker in Liverpool was contracted to make 257 jackets on piecework rates. She shared that work with three other outworkers to meet the employer's deadline. Following completion of the contract, the employer refused to pay the workers, who subsequently notified the Department of Industrial Relations. An investigation was instigated by the department. Initially the employer denied that any relationship existed with the complainants. However, with the co-operation of the principal contractor, sufficient information was obtained to locate the employer. In April the department brokered a conciliation meeting between the employer and the worker, with the result that the worker was paid. The worker said, "This is a victory for four of us" when she received her due entitlements. Those examples are a practical illustration of the positive results flowing from the Government's clothing outworkers strategy.

### MOUNT PENANG BUSH FIRE BRIGADE

**The Hon. DUNCAN GAY:** My question without notice is to the Minister for Juvenile Justice. Have serious allegations regarding the Mount Penang Bush Fire Brigade now been referred to the Independent

Commission Against Corruption? What action has the Minister's department taken to investigate an occurrence when a Mount Penang tanker was allegedly driven by an unlicensed detainee and collided with another Rural Fire Service vehicle? What is the exact status of the Mount Penang Bush Fire Brigade?

**The Hon. CARMEL TEBBUTT:** On a number of occasions I have spoken in this Chamber about the important role played by the Mount Penang Bush Fire Brigade in relation to rehabilitation of detainees at Mount Penang. It gives detainees an opportunity to be involved in community activities, to make some reparation back to the community and to perform an important community service. It is a function that the Department of Juvenile Justice takes very seriously, and it plays an important role in the overall programs offered at the Mount Penang, or the new Frank Baxter Juvenile Justice Centre. I am not aware of the matters raised by the honourable member but I will undertake to investigate them. They are obviously serious, if the allegations are correct. Nonetheless, the fact that I am not aware of them leads me to believe that there might be more to the matter than indicated by the honourable member. I undertake to get some more information and to come back to the honourable member with a response.

### HOSPITAL BED NUMBERS

**The Hon. ELAINE NILE:** I direct my question to the Minister representing the Minister for Health. Has the Australian Institute of Health and Welfare reported that the number of public hospital beds is declining while private hospital admissions are rising? What action will the Government take to ensure that the public hospital system maintains the highest standard of service and availability for those not covered by private health insurance?

**The Hon. JOHN DELLA BOSCA:** Generally I am aware of a large number of initiatives undertaken by the current Minister for Health to ensure the capacity and effectiveness of the public hospital system in this State. Given that the honourable member has asked a specific question about the relationship between that system and private health insurance providers, I will seek a detailed response from the Minister and will make it available as soon as I can.

### ABORIGINAL DRUG EDUCATION RESOURCES

**The Hon. PETER PRIMROSE:** My question without notice is to the Special Minister of State. As the theme of National Drug Action Week focused on indigenous drug and alcohol abuse, will the Minister inform honourable members of any specific initiatives to educate young Aboriginal people about the harms of drug misuse?

**The Hon. JOHN DELLA BOSCA:** As the honourable member correctly points out, yesterday's theme for National Drug Action Week was indeed focused on indigenous drug and alcohol issues. As I said on Tuesday, National Drug Action Week provides a unique opportunity for the community to focus upon this serious and important issue, with each day dedicated to a different theme. I inform honourable members of a particular school-based initiative targeted at young Aboriginal people. All students in government schools are taught drug education. It is a core component of the mandatory syllabus, personal development, health and physical education. However, there is also a need to provide educational material that is culturally appropriate to young Aboriginal students.

In consultation with the New South Wales Aboriginal Education Consolidated Group, the Department of Education and Training has developed a drug education resource called Healing Time. Healing Time targets Aboriginal students in junior secondary school. Healing Time consists of a comic, a staff activities booklet, a parent and community activities and school community planning activity booklet, a student activities booklet and a poster. The Healing Time comic was developed with an Aboriginal editor and artists. Aboriginal elders advised on cultural aspects of the materials, and more than 200 students were involved in the consultation process on the materials. Healing Time has been taught intensively in a block, in normal class lessons during a term, in a camp or orientation session followed by normal class lessons, and also to groups, followed by withdrawal sessions for targeted Aboriginal students.

Healing Time student activities have been implemented with class teachers, selected or volunteer teachers, Aboriginal education advisers and community members. It is hoped that outcomes of the program include giving staff the knowledge and skills in the provision of culturally appropriate drug education for Aboriginal students, making the school a learning environment that understands and supports the drug education needs of Aboriginal students, involving the Aboriginal community with drug education at school, and ensuring

Aboriginal students will develop an increased awareness and understanding of drug issues and competencies to address drug issues in their lives. Although Healing Time was developed specifically for Aboriginal students, it has been taught very successfully in some schools to all students in a particular year group. In this way it has also successfully promoted reconciliation. Last year training for the use of Healing Time was provided for 20 schools. This followed a successful pilot of the materials in 1999 at Walgett and Wellington high schools. Additional schools are being provided with training this year.

#### AUDITOR-GENERAL REPORTING RESTRICTIONS

**Reverend the Hon. FRED NILE:** I ask the Special Minister of State, representing the Premier, a question without notice. Is it a fact that the New South Wales Crown Solicitor recently advised the New South Wales Auditor-General, Mr Bob Sendt, that he must restrict his department's audit reports to Parliament to financial analysis of government operations and agencies only, and that he is not to undertake wider audits looking at probity, government waste and management inefficiencies? Is it a fact that this advice from the Crown Solicitor seriously restricts the powers of the Auditor-General to scrutinise State government activities therefore bringing into question public accountability of government spending? What action will the Government take, in view of the Treasurer's public promise in the media, to amend the Public Finance and Audit Act, part 3 audit, to clarify the Auditor-General's reporting powers so that Parliament is fully informed of the State's financial obligations, including probity, government waste and management inefficiencies?

**The Hon. JOHN DELLA BOSCA:** I thank the honourable member for his question, the details of which I believe many honourable members are broadly familiar with. The question involves a policy question that would be more appropriately answered by the Treasurer upon his return. I am sure he will give Reverend the Hon. Fred Nile a detailed relevant answer.

#### SCHOOL MAINTENANCE CONTRACTOR PAYMENTS

**The Hon. PATRICIA FORSYTHE:** My question without notice is to the Special Minister of State, representing the Minister for Education and Training. Is it a fact that contractors who are owed millions of dollars for maintenance work on schools were given a part-payment after the issue was given media prominence in the *Daily Telegraph* last week? Why did it take media attention for the payments to be made? Why could the Government not meet the full debt? Will the Government guarantee that all outstanding debts to the contractors identified in the story will receive their money by close of business today?

**The Hon. JOHN DELLA BOSCA:** I too read the *Daily Telegraph*, so I am aware of those reports. It is not something I have taken up with the Minister but, of course, the handling of the department's budget is specifically the responsibility of the Minister in question. I am sure he can provide this House and the honourable member with a satisfactory answer.

#### NIELSEN PARK SHE-OAK TREE

**The Hon. AMANDA FAZIO:** My question without notice is directed to the Minister Assisting the Minister for the Environment. What action is the Government taking to protect the she-oak in Nielsen Park, Sydney, and repopulate the park with she-oaks? I might add, for the benefit of members opposite, I am not being discriminatory because there is no known he-oak!

**The Hon. CARMEL TEBBUTT:** I can confirm that the Hon. Amanda Fazio is not being sexist, unlike other people in this House. This is a particularly good question because it gives us the opportunity to focus on what is happening with biodiversity at a microlevel on the same day that the Government announced its conservation blueprint for New South Wales on a macrolevel. This question relates to biodiversity at the microlevel and what can be achieved. Nielsen Park has one of New South Wales rarest plant species, a she-oak. Perhaps it is an understatement to say that it is rare; scientists at the Royal Botanic Gardens believe it is in fact the world's last surviving tree of the species *Allocasuarina portuensis*.

The she-oak story is yet another reminder of the fragility of the environment and the importance we all need to place on protecting the environment in whatever ways possible. Scientists believe that this species of she-oak was once broadly distributed along the foreshore of Sydney Harbour. However, loss of habitat, the growing popularity of the area as a recreation spot and changing fire patterns are believed to be the main reasons the species has declined to the point where only one tree remains. I am pleased to advise the House that the Royal Botanic Gardens is trying to ensure that this species is brought back from the brink of extinction. It is

fascinating that Opposition members are not interested in this issue; their record on biodiversity protection is so appalling that it is not surprising that they are not interested in what is happening. However, other people in this House are interested.

For the past five years horticultural staff at the Mount Annan Botanic Gardens have been propagating the she-oak from seeds and cuttings to produce enough plants to reintroduce it to its natural habitat. Some 80 seedlings will be planted over this winter at several locations in the Sydney Harbour National Park, including Nielsen Park and Gap Bluff. Seed samples are being held also at the Mount Annan seed bank as a further safeguard for conserving the species. These seed samples will be examined by researchers in three to five years to monitor how they have fared over that period. As part of the joint species recovery plan, it is now hoped that these latest plantings of cultivated seedlings at Nielsen Park will establish a self-sustaining population in the park. This work is a major step towards ensuring long-term protection of this rare species. It is part of the Government's commitment to safeguarding our natural heritage for the future. I am sure honourable members would join me in congratulating the staff at the Royal Botanic Gardens on the important work they are doing to conserve biodiversity.

### PARLIAMENTARY BEHAVIOUR

**The Hon. DAVID OLDFIELD:** My question is to the Hon. John Della Bosca, the Acting Leader of the House. Is it correct that a member of Parliament's participation in a blockade of Parliament that impedes other members' lawful entry into Parliament is a breach of privilege? Is it correct that television footage appears to show a member of this Chamber attempting to impede the entry of other members into the Parliament? Is the Minister aware that the volatility of the blockade was such that at least one member of this House disclosed in *Hansard* that the police had said they could not guarantee a member's safety? Will the Minister advise the House of any steps that can be taken by the Parliament to investigate the situation and assess if any disciplinary action should be taken? Will the Minister inform the House which member appears in that television footage?

**The Hon. JOHN DELLA BOSCA:** I believe the general consensus about the blockade has been that interfering with a member's entry to Parliament could, in the broader sense, constitute a contempt of the Parliament. The twenty-second edition of Erskine May's *Parliamentary Practice: Treatise on The Law, Privileges Proceedings and Use of Parliament*, at page 121 states:

It is a contempt to molest a member of either House while attending the House, or coming to or going from it.

I am not sure if the honourable member is alleging that one of the members herein the other day molested him in his attempt to enter Parliament on that day or on his attempt to exit. However, Erskine May continued:

Members and others have been punished for such molestation occurring within the precincts of the House, whether by assault or insulting or abusive language, or outside the precincts.

If any member wishes to raise a matter of privilege or contempt, he or she may do so in accordance with the standing orders and resolutions of the House.

I note that the House or the President may refer matters of privilege to the Standing Committee on Parliamentary Privilege and Ethics. The honourable member has put to me that I could identify, from television footage, a particular member of this House or another House involved in an incident. I did think I saw her flashing by.

**The Hon. Duncan Gay:** I did but see her flashing by.

**The Hon. JOHN DELLA BOSCA:** I thought all of the unreconstructed Menziesites would like that one. The Leader of the Opposition is not in the Chamber, but I do not think I could make a positive identification.

### AQUATIC RESERVES

**The Hon. JENNIFER GARDINER:** I ask a question of the Minister for Fisheries. What is the Government's response to Lake Macquarie City Council's unanimous rejection of the Minister's proposal for an aquatic reserve? Have councillors stressed that proper community consultation is necessary as "without the support of the community no measures to protect the lake's biodiversity would work"? Will the Minister ensure that Fisheries' community consultation process, described as "woeful" by councillors, is improved?

**The Hon. EDDIE OBEID:** I answered a similar question on this issue on 6 June, but I am happy to respond again. Aquatic reserves play an important role in conserving marine biodiversity and protecting key nursery habitats along the New South Wales coastline and oceans. On 8 May this year New South Wales Fisheries released a consultation paper proposing a number of candidate sites as future aquatic reserves. Those candidate sites include selected rocky shores and estuaries between Newcastle and Tathra. Candidate sites are identified based largely on scientific information. On the basis of such scientific study, a small part of Lake Macquarie was identified, together with 21 other sites, as possible locations for aquatic reserves. Public comment on the consultation paper has been invited up until 6 July 2001. Submissions can be made by mail, fax and Internet. All submissions will be carefully considered, and any comments on social and economic impacts also will be evaluated to determine the suitability of each candidate site for declaration as an aquatic reserve.

New South Wales Fisheries has been encouraging stakeholder and wider community groups to make submissions indicating their views on the lake and whether or not an aquatic reserve is appropriate and necessary in the area. To be sure that the local community is given as much opportunity to comment as possible, a community open day was held on 24 May at Lake Macquarie City Council. New South Wales Fisheries staff were on hand to discuss issues concerning the proposed aquatic reserve as well as registering important feedback from concerned interest groups. New South Wales Fisheries also attended an open public meeting at Swansea on 4 June to hear the views of committed users of the lake. A lot of very constructive comments have been made by those who have a detailed knowledge of the lake, and New South Wales Fisheries is listening to the comments being put to it.

No decision has been made by the Government on whether or not there should be an aquatic reserve in Lake Macquarie, or what form such a reserve may take. All views expressed by members of the community will be carefully considered. The views of Lake Macquarie residents are of great significance when deciding how the biodiversity of the lake is best protected. I repeat, for the benefit of the Hon. Jennifer Gardiner, who has asked this question for the second time, that she has the answer: the decision will be made after 6 July. The whole idea of community consultation is to get feedback from the community. Whether that is positive, negative or indifferent is irrelevant. It is about listening to the community, and that is what we are doing. Trying to prompt a decision on what the Government will and will not do before the 6 July deadline is wasting the time of this House. Quite obviously, the honourable member has no idea of the process. The community is able to have its say, and the Government will listen. I am sure the community, after seeing the scientific evidence that is available to the department, will make its judgment. But nothing is in concrete. We will wait till 6 July to see submissions, take feedback and consider the scientific evidence, and will make an informed decision then.

**The Hon. JENNIFER GARDINER:** I ask a supplementary question. Minister, are you saying that Lake Macquarie City Council does not have detailed information about Lake Macquarie? Is that why this week the council unanimously rejected your proposal for an aquatic reserve?

**The Hon. EDDIE OBEID:** I have not said that the council does not have detailed information. I said New South Wales Fisheries shares all of the scientific information. Lake Macquarie happens to be a very important tourist attraction, and not just the city council will have a say on this question. Quite obviously, the city council has its view, and it has made that view well known. I have heard its view. But there are more views than just that of the city council to assess. We have had submissions from many in the community. We want to listen to all of them. Of course the city council's view is important. The council, like everyone else, should submit the information provided for the consultation process. The council, like everyone else, will have to wait until after 6 July. When the decisions are made we will share them with the House and the public.

#### WHITE ASBESTOS PHASE-OUT

**The Hon. JOHN JOHNSON:** My question without notice is directed to the Acting Leader of the Government, Special Minister of State, and Minister for Industrial Relations. Can the Minister inform the House about arrangements for the phase-out of white asbestos?

**The Hon. JOHN DELLA BOSCA:** The New South Wales Government is preparing to push forward the proposed phase-out of the importation and use of chrysotile, commonly known as white asbestos. The move is supported by other State governments and the Commonwealth Government. Chrysotile is a known carcinogen. It is anticipated that the phase-out will now begin on 31 December 2003. It was originally planned to start on 1 January 2005. This substance is used in a variety of industrial applications, including replacement brake linings for some cars and dry packing materials. It is also used in filters and as a filler in some adhesives.

Consultation is under way between WorkCover New South Wales and manufacturers, unions and industries affected by the phase-out. WorkCover recently has initiated an awareness-raising strategy that aims to

inform relevant industry stakeholders of the 2003 phase-out. This will begin with WorkCover New South Wales contacting the importers and suppliers of asbestos to advise them of the revised phase-out date. The use of other types of asbestos commonly known as grey, brown and blue asbestos in manufacturing and industry generally already has been banned in New South Wales. I am pleased to say that the New South Wales Government has played a prominent role in initiatives to deal with this hazardous substance and a prominent role in bringing forward the phase-out arrangements agreed between the States and the Commonwealth.

### POLICE SNIFFER DOGS

**Ms LEE RHIANNON:** I direct a question to the Special Minister of State, representing the Minister for Police. Have additional sniffer dogs been brought into operation since 29 May this year, the date that the Minister informed me that there were four sniffer dogs trained for drug detection? If so, how many sniffer dogs are now operating in New South Wales? How many sniffer dogs are trained to detect cannabis, to detect heroin, to detect amphetamines, and to detect ecstasy? Are the sniffer dogs trained to detect only one drug, or are they trained to detect a variety of banned substances? How many people have been searched by a police officer, upon indication from a sniffer dog, with no drug being located?

**The Hon. JOHN DELLA BOSCA:** I will direct most of the specific issues in the honourable member's question to the Minister for Police. However, I can inform the House that police are required to act on any information they receive from the public about drug crime. I am advised that police recently conducted overt and covert operations on the North Coast and in other parts of the State to detect illicit drugs. I am also advised that, as a result of the raids, police recently seized some 812 cannabis plants with a potential street value of \$1.6 million in northern New South Wales. These operations have been carried out with the support of regional target action teams, task forces from crime agencies and, as the honourable member correctly pointed out, drug detection dogs.

As to the honourable member's question about the number of drug sniffer dogs operating in the New South Wales Police Service, details of the way in which they are trained and their skills vis-a-vis different categories of illicit drugs, I will refer the question to the Minister to get a specific answer as soon as I can and make it available to her. In addition, the sense of the honourable member's question is similar to a line of questioning pursued by the Hon. Richard Jones about the deployment of sniffer dogs. I can advise him in my capacity as Minister responsible for the Drug Summit that I have asked the Minister for Police to respond to a number of matters in relation to the general policy of the use of sniffer dogs. I will be able to provide that information to the House as well.

### GOVERNMENT WEB SITE

**The Hon. Dr BRIAN PEZZUTTI:** My question is to the Minister for Industrial Relations. Is he aware of this statement by the Premier on the New South Wales Government web site:

The Internet is enabling us to make Government more open, and more accessible, than ever before.

Why, then, did WorkCover fail to post the 2001-002 workers compensation premium rates on its web site until 28 June, despite their publication a week ago in the *Government Gazette* of 22 June? Has WorkCover failed to meet the expectations of the Premier? He also stated:

In technology, and in the delivery of Government information, we are aiming for excellence.

**The Hon. JOHN DELLA BOSCA:** I thank the honourable member for his diligence in—

**The Hon. Duncan Gay:** He reads it every week.

**The Hon. JOHN DELLA BOSCA:** I am glad to hear that he regularly reads the words of the Premier. It would no doubt help—

**The Hon. Eddie Obeid:** You'd learn a lot.

**The Hon. JOHN DELLA BOSCA:** He would learn a lot, as the Hon. Eddie Obeid said. Reading the words of the Premier would enable any member in this place to learn a lot about a whole range of matters. The Hon. Dr Brian Pezzutti knows that the Premier has—

[Interruption]



I missed the sense of the Hon. Dr Brian Pezzutti's comment, although I heard some reference to the Premier walking on water. I do not know whether blasphemy is contrary to the standing orders; perhaps I could seek some advice on that. But I believe that the honourable member was making an improper analogy between the Premier and Jesus Christ. I will leave that issue to one side. I will, no doubt, benefit from checking the precise wording of the Premier's comment on the New South Wales Government web site. I will happily provide the honourable member with a detailed response to the sense of his question on the earliest possible occasion.

### EMPLOYMENT CONDITIONS

**The Hon. IAN WEST:** My question is directed to the Special Minister of State, and Minister for Industrial Relations. Will the Minister inform the House how the New South Wales industrial relations system provides relevant employment conditions for employees in New South Wales?

**The Hon. JOHN DELLA BOSCA:** I thank the honourable member for his interest in industrial relations, which is axiomatic, given his long involvement with the trade union movement and his role prior to entering this place as a senior official of one of the State's major unions. The Industrial Relations Act 1996 requires the Industrial Relations Commission of New South Wales to review each award before the expiration of three years. The purpose of the review is to consolidate and modernise awards to ensure that they reflect the current employment conditions of New South Wales workers. The New South Wales system relies on genuine bargaining at industry and enterprise level, backed up by access to an independent umpire in the form of the New South Wales Industrial Relations Commission.

By developing an effective, consultative mechanism at the workplace, employers and employees can benefit from improved morale, achieve a more open and trusting environment, and deliver a better understanding of the needs of each other in the running of the business. This provision, which is welcomed by unions and employers alike, can be contrasted sharply with the Federal industrial relations system. Peter Reith was the architect of the Workplace Relations Act that stripped away award conditions and slashed the role of the independent umpire, the Australian Industrial Relations Commission, and gave greater powers to the Office of the Employment Advocate. Proposals are also designed to give further primacy to individual bargaining over collective bargaining, which is inconsistent with Australia's International Labour Organisation obligations.

I hear with great interest that Peter Reith has scheduled a news conference for this afternoon, and that he is expected to announce his retirement from Federal politics prior to the next election. Some of my colleagues seem happy with that announcement, but I have a different opinion. I hope that the speculation is wrong. I do not want him to resign. I sincerely hope that the people of Flinders are not denied the opportunity to vote him out. Let us be quite clear about the people that Peter Reith sees as the enemy: workers covered by the trade unions, about two million workers from all walks of life, nurses, transport workers, teachers, miners, shearers and factory employees, people who have been the backbone of the economic development of our nation. Peter Reith is the man who introduced balaclava-covered guards and Army forces trained in Dubai to the workplaces of Australia.

Mr Reith's second wave of proposals include removing the role of the Industrial Relations Commission to ensure that all certified arrangements meet the no disadvantage test; limiting the commission's discretion in determining safety net wage increases; further reducing the matters that the commission can include in awards; limiting the commission's compulsory conciliation powers; and forcing it to charge for voluntary conciliation. The New South Wales system relies on genuine bargaining at industry and enterprise level, backed up by access to the independent umpire in the form of the New South Wales Industrial Relations Commission. By developing an effective, consultative mechanism in the workplace employers and employees can benefit from improved morale and achieve a more open and just environment to deliver a better understanding of the needs of each other in the running of their business.

### LICENSED FIREARM OWNERS

**The Hon. JOHN TINGLE:** My question without notice is addressed to the Assistant Treasurer—

**The PRESIDENT:** Order! I call the Hon. Dr Brian Pezzutti to order.

**The Hon. JOHN TINGLE:** My question without notice is addressed to the Assistant Treasurer in the absence of the Treasurer, representing the Minister for Police. Is it a fact that the Australian Bureau of Statistics produced a report in July last year that indicated that licensed firearm owners are not responsible for most

firearms crime? Will the Minister therefore consider removing licensed firearm owners from lists of persons of special interest [PSI] on the computerised operational policing system [COPS], which places all law-abiding, licensed firearm owners in the same category as known criminals, suspected drug dealers, child molesters and other persons convicted, or suspected, of major crime?

**The Hon. JOHN DELLA BOSCA:** I am not in a position to answer the honourable member's question. I am sure the Minister for Police will be able to obtain an answer from the Police Service. I will provide it to the honourable member as soon as I have it.

### COMMERCIAL FISHERIES ECONOMIC SURVEY

**The Hon. JOHN JOBLING:** My question without notice is to the Minister for Fisheries. Is the Minister aware of the widespread concern among fishers about the statewide economic survey of New South Wales commercial fisheries by Roy Morgan Research and Dominion Consulting? Is he aware that many fishers believe that the information gathered may later be used to close them down? Will the Minister guarantee the privacy of any fisher who responded to the survey?

**The Hon. EDDIE OBEID:** This is nothing new. We are all concerned about the commercial fishing sector in this State. I have said on numerous occasions that there are more than 1,800 small businesses that take out about 17,500 tonnes of wild stock. The income is between \$80 million and \$90 million a year. There is certainly not enough income to maintain the standard of living of all those commercial fishers. The Government made it quite clear that it will not be taking away the livelihood of any commercial fishers without compensation. The Government will compensate only those commercial fishers who are affected.

The Hon. John Jobling referred in his question to economic surveys. In response to a decision by the Land and Environment Court handed down in January last year the Government put in place comprehensive legislation to enable an assessment of the environmental impact of fisheries—something that the Coalition Government should have done when it introduced the Fisheries Management Act in 1994. By not carrying out those environmental assessments it left all commercial fishers in a state of flux, with no security for the future. This Government is now carrying out those assessments. The new legislation, which provides for environmental assessments to be conducted at the fishery level, removes the potentially costly requirement on industry to submit individual licence assessments. The Department of Urban Affairs and Planning has finalised guidelines for the environmental assessment of commercial fisheries. Those guidelines require an assessment of the impact of implementing each fishery management strategy, including economic and social considerations as well as biological considerations.

New South Wales Fisheries has contracted the services of the highly reputable survey consultant, Roy Morgan Research, to undertake the social and economic survey work associated with these environmental assessments. Before finalising the survey design the consultants tested it on a number of industry representatives from each of the elected management advisory committees. The level of support from industry co-operating with the surveys has been overwhelming. Preliminary information indicates that the response rates have far exceeded expectations. In the first weekend of the telephone social survey Roy Morgan Research recorded 608 complete responses. It is encouraging to see that commercial fishers appreciate the importance of their involvement with this survey. The environmental assessment process will give the community confidence that commercial fishing practices are sustainable and will assist commercial fishers to obtain long-term security. I assure honourable members that this issue is about the better management of our fisheries. The information that is provided in this survey will be confidential. The Government has no policy or program in place—

**The Hon. John Jobling:** Are you guaranteeing this?

**The Hon. EDDIE OBEID:** I have only limited time, so the honourable member should let me complete my answer.

**The Hon. John Jobling:** Just guarantee it.

**The Hon. EDDIE OBEID:** As with all surveys, the privacy of those participating in it will be guaranteed. This Government has in place no policy to take out any commercial fisher without compensation. To suggest that industry should not reorganise itself—

**The Hon. John Jobling:** That was not the question. Privacy was the question.

**The Hon. EDDIE OBEID:** The Government has no plan in place to take out any commercial fisher without compensation when a recreational fishing area is designated. An assessment will then be made and fishers will be bought out. All the other information to which the honourable member referred will not be used inappropriately because no plan is in place to take out any fishers without compensation.

### NEW ENGLAND MINERALS EXPLORATION

**The Hon. JANELLE SAFFIN:** My question without notice is directed to the Minister for Mineral Resources. What is being done to ensure that every opportunity is being taken to develop potential mineral deposits in the New England area?

**The Hon. EDDIE OBEID:** The honourable member has a longstanding interest in the State's mineral industry. Exploration investment of our minerals industry creates jobs in country areas and stimulates local businesses. The New England region has a rich mining heritage. In the past it has been a source of tin, gold, diamonds and other valuable minerals. There has been much speculation as to what potential there is for a resurgence of the mining industry in the area.

The New South Wales Government's research is helping to end this speculation. We are determined to replace it with detailed scientific information to encourage exploration and investment in the region. The Government's \$30 million Exploration New South Wales initiative aims to stimulate investment in our mineral resources. The seven-year program includes a number of projects that build on our knowledge of the State's mineral potential. This is essential information that we are offering to worldwide investors.

Rimfire Pacific is an exploration company currently operating in the western New England area on the basis of New South Wales Government information. This information was gathered during early aerial magnetic surveys. Rimfire based its exploration on a conceptual model for diamond formation developed by scientists from the Department of Mineral Resources. Recently, the company announced that it had found a 0.265 carat diamond, or a macro diamond as it is known, in alluvial gravel near an area identified by the New South Wales Government. Of course, the hunt is now on for the source of that alluvial diamond.

This month the New South Wales Government provided \$225,000 for a major aerial survey to encourage mineral exploration and investment in the Tamworth area. The survey has already attracted much local interest. The survey team is using a Beechcraft Baron piston-driven aircraft that is equipped with more than \$500,000 worth of scientific equipment. This survey will build on information gained in earlier surveys of this region.

Weather permitting, the survey team will cover round 1,600 kilometres each day and will eventually have minerals information about 30,000 line kilometres of the New England area. The research flights cover a triangular area bounded by the townships of Walcha, Armidale and Manilla. The southern boundary of the survey is just 15 kilometres north of Tamworth. I look forward to updating the House on the further mineral developments in this important area in new England.

### ETHNIC COMMUNITIES COUNCIL FUNDING

**The Hon. Dr PETER WONG:** My question without notice is to the Special Minister of State in the absence of the Treasurer, who represents the Premier and Minister for Citizenship. As the Ethnic Communities Council has now made the changes to its constitution that the Government required as a prerequisite to providing funding, will the Government finally restore funding to the Ethnic Communities Council of New South Wales? If the Government still does not intend to fund the Ethnic Communities Council, what reason will it give for not doing so this time? What does the Government see as the future role of the Ethnic Communities Council of New South Wales? Would the Government prefer the Ethnic Communities Council to remain silent or just disappear?

**The Hon. JOHN DELLA BOSCA:** I think that question requires me to make a policy announcement, and I am not in a position to make such an announcement. As the honourable member's question dealt with matters of gravity I will ask the Premier for an answer and respond to the honourable member as soon as possible.

### COMMONWEALTH-STATE ELECTORATE ROLL

**The Hon. DON HARWIN:** My question without notice is directed to the Special Minister of State, in his capacity representing the Premier. Is the Government satisfied with the integrity of the current joint Commonwealth-State electoral roll? Will the Government support measures to deal with fraudulent enrolment,

as recommended by the recently released report of the Commonwealth Parliament's Joint Standing Committee on Electoral Matters? If not, why not? Will the Government give a commitment that New South Wales will stay in the joint electoral roll agreement with the Commonwealth should the Parliament legislate to combat fraudulent enrolment?

**The Hon. JOHN DELLA BOSCA:** Madam President, as aspects of that question require an expression of opinion I ask you to rule those aspects of the question out of order.

**The Hon. Don Harwin:** Point of order: Is the Minister taking a point of order?

**The PRESIDENT:** Order! I assumed that the Minister was answering the question. I do not think he was taking a point of order.

### TRIPLE CARE FARM

**The Hon. HENRY TSANG:** My question without notice is directed to the Minister for Juvenile Justice. What is the Government doing to assist the Triple Care Farm to provide services to young people?

**The Hon. CARMEL TEBBUTT:** The Department of Juvenile Justice has many community partners that are funded to provide services to our clients. Triple Care Farm, which is operated by Mission Australia, is one of those partners. Since 1997 it has received funding assistance from the department towards its running costs. The residential program offered at Triple Care is of tremendous benefit to the clients of the Department of Juvenile Justice. Its focus is to achieve the reintegration of homeless and disadvantaged young people back into society. The client group at Triple Care is typical of the department's overall client group. During the last year more than two-thirds of the clients at Triple Care reported that they had previously experienced physical and/or sexual abuse. More than 90 per cent admitted to problem drug use.

Many clients came from a sole-parent background, and most had come into contact with the criminal justice system at some time. Over one-third of the group had previously attempted suicide. It is a particularly difficult group that the Triple Care program is dealing with. The success of the Triple Care program is remarkable, particularly when the difficult nature of the client group is taken into account. On average, 70 per cent of program graduates either find employment or enter into continuing study. In the first three months back in the community after completing the residential program clients continue to be supported by a Triple Care worker.

For these young people Triple Care is in many ways a lifeline. Unfortunately, in August last year one of the houses at Triple Care Farm was destroyed by fire. At the same time, the renovation of another house on the property is ongoing. The result of this has been to reduce the maximum accommodation capacity by about 25 per cent. Because of the outstanding work done by Triple Care, and the number of Juvenile Justice clients accepted into the program, the department recently allocated a special grant to assist in the renovation of accommodation at the farm.

A one-off grant of \$25,000 has been made in addition to the continuing annual allocation of around \$50,000. This grant will enable Triple Care to restore its accommodation capacity as quickly as possible. Unfortunately, there is a great need for this program. Many young people in our society grow up without appropriate care and support. The result is frequently homelessness, drug abuse and crime. As a society we all pay for these failings. Triple Care Farm is doing a tremendous job. Its dedicated staff are working with a very difficult group and having significant successes. It is a job we should all be grateful for.

### GOVERNMENT LAND OWNERSHIP DATABASE

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** My question is directed to the Minister for Juvenile Justice, representing the Minister for Information Technology. The New South Wales Department of Information Technology and Management has a computer database of all land owned by the New South Wales Government across all departments and agencies. Why is permission from the Minister required for access to that database? Why is this information not in the public domain? When will the database be placed on the Internet?

**The Hon. CARMEL TEBBUTT:** I will refer the honourable member's question to the Minister in the other place and undertake to get a response as soon as possible.

## PROVISIONAL ELECTORAL ENROLMENTS

**The Hon. JOHN RYAN:** My question is addressed to the Special Minister of State. The Australian Labor Party's document entitled "Campaigning for the Future" states on page 13:

To maximise the Candidate's efforts it is worth noting that the Commonwealth Electoral Act allows for the provisional enrolment of 17 year olds.

Can the Minister guarantee that the New South Wales Labor Party is not advocating stacking the electoral roll in the lead-up to this year's Federal election?

**The Hon. JOHN DELLA BOSCA:** That was a good try. As honourable members opposite can easily avail themselves of a copy of "Campaigning for the Future"—which the Hon. Rick Colless has a copy of right now—they will find that it is in fact a national publication of the Australian Labor Party. It is also approximately seven or eight years out of print. Without being able to review the exact sense of the passage referred to by the honourable member, I absolutely assure him that the ALP has not, at either Federal or State level, officially or unofficially, advocated any breaches of Australian electoral laws. The way in which he phrased the question should answer his concern, which is that Commonwealth electoral laws allow for provisional enrolment. Any diligent person may legally enrol in anticipation of an election being called and that person becoming eligible to vote in the meantime.

If honourable members have any further questions, I suggest they place them on notice.

## MOUNT PENANG BUSH FIRE BRIGADE

**The Hon. CARMEL TEBBUTT:** Earlier the Deputy Leader of the Opposition asked me a question about the Mount Penang Bush Fire Brigades. I am advised that the Mount Penang Bush Fire Brigades truck was called to a fire in Gosford. It was driven to the site of the fire by the licensed fire captain. A second truck was called to the fire and was directed to a position slightly in front of the first truck. The Mount Penang truck and officers were in the process of fighting the fire and were asked to move their truck five metres forward. One of the detainees was directed to do that, as it was an emergency situation. In the course of being moved that truck scraped an open door of the second truck. Damage was minimal.

**Questions without notice concluded.**

*[The President left the chair at 1.05 p.m. The House resumed at 2.00 p.m.]*

## INSURANCE PROTECTION TAX BILL

## HEALTH CARE LIABILITY BILL

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

## WORKERS COMPENSATION LEGISLATION AMENDMENT BILL (No 2)

### In Committee

**Consideration resumed from an earlier hour.**

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [2.02 p.m.]: I move Opposition amendment No. 3:

No. 3 Pages 25 and 26, schedule 4.1 [2], line 15 on page 25 to line 16 on page 26. Omit all words on those lines.

This amendment refers to an issue that the Opposition has fought against in the past. We see the provision as reverse discrimination. It was a notable omission from earlier legislation and its inclusion represents a back down by the Government. Honourable members will be aware that there was a degree of public concern over the suggestion of a threat by coalminers to the Government that unless they were given an exclusion, significant industrial action would be taken. Whether that is the case is neither here nor there. I remind honourable members that there is a history to the inclusion of this provision in the legislation.

The Opposition has previously voted against a distinction being made for coalminers. That was based partly on the premise that the coalminers' scheme was not in a good financial state. The Government, in its

defence of the need for a separate scheme for coalminers, put that the scheme was in a good financial position. In recent months there has been some public debate about the financial state of the coalminers' scheme, and for that reason the Opposition, by this amendment, is reaffirming its intention that no special distinction should be made for coalminers. It is quite straightforward. The Opposition believes that all workers should be dealt with under the legislation. There should not be special consideration, as there is in this bill. For that reason the Opposition is seeking the omission of this provision from schedule 4.

**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) [2.06 p.m.]: The Government does not support the amendment, for a number of reasons. Before I go through them I will deal with the general points made by the Leader of the Opposition. The reason for the exclusion of the coalmining industry, as I said last night, is that since 1947 the coalminers workers compensation scheme came under a set of arrangements jointly administered by the Commonwealth and State governments. The Joint Coal Board is responsible for workers compensation in the coalmining industry; a range of other administrative and dust disease control measures: the coal dust inspections, the miners and mines rescue body.

For some time now the Government has been in discussions with the Commonwealth, through the Federal Minister for Industry, Science and Resources, and directly with coal industry employees and employers, as the Commonwealth has been seeking to some time to terminate those arrangements for a number of policy reasons that I am not accountable for and which I will not go into. The New South Wales Government has indicated a preparedness to co-operate with the Commonwealth and withdraw from the Joint Coal Board arrangements. The involvement of both stakeholders has led to some delicate negotiations that were going on before I was appointed as the Minister responsible and, to my certain knowledge, at least the year and a half before that.

The only union involved in these negotiations—the Construction, Forestry, Mining and Energy Union, mining division—and the various coal industry employers through the Minerals Council have all but agreed, and I think agreement is imminent on a new structure that is preferable to the arrangements that have been in place, from a financial point of view as well as the integrity of the functions that need to be performed by the industry body. To bring the coalmining scheme into the WorkCover scheme, would be a reversal of 50 years of history.

It would very seriously disrupt those negotiations and jeopardise much of the progress made. For that reason the Government will not accept the amendment moved by the Leader of the Opposition. The provision exempts coalminers from most changes made by the bill. The observation by the Leader of the Opposition that the separate coal workers compensation scheme has difficulties is not disputed by the Government. It has been one of the subjects of negotiation between the two stakeholders and the Government in relation to the arrangements that will replace the Joint Coal Board. One of the points of focus of the new arrangements is to ensure that the coal scheme is improved to reduce risks. Occupational health and safety in the coal mining industry are of a high standard but the aim is to improve injury management and other issues.

I am happy to have it placed on the record that all the stakeholders, including the union, are concerned that as a result of the relative shrinkage of the coalmining work force in New South Wales the number of employees able to support a separate workers compensation scheme is at or close to critical mass. But the overwhelming view of the key stakeholders and the Government is that we want to proceed beyond the Joint Coal Board arrangements to the new set of arrangements that I will shortly be able to announce. Therefore, any attempt to bring the coalmining scheme into WorkCover would be very disruptive to the important and fruitful negotiations.

**Ms LEE RHIANNON** [2.12 p.m.]: The Greens oppose the amendment. It would extend the unfairness of this bill to coalminers as well. Coalminers, through the hard work of the union over the years, have won their own scheme. Society and past governments have acknowledged the particular conditions of workers in the industry, which is incredibly dangerous. That is why successive governments have been willing to keep the separate scheme in place. I congratulate the Government. Anything that it can do to help improve safety measures in the mining industry is to be welcomed.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [2.13 p.m.]: The Democrats do not support the amendment. Without doubt the coalmining industry is the most dangerous industry that there is. The reduction in the accident rate attests to the good work that has been done within the coal industry and the co-operative approach to looking after injured workers. It is a model for other industries. As my colleague said, to put the coalmining scheme under a bill as harsh as this one would be unfair.

**Reverend the Hon. FRED NILE** [2.14 p.m.]: Like the Government and some crossbench members, the Christian Democratic Party supports retention of the current distinction in workers compensation for the coalmining industry. The Government has said that the scheme for coalminers is under review, and that in due course there may be amending legislation in that respect. The amendment raises an important principle that I have been wrestling with as I have been lobbied by groups with particular concerns. General Purpose Standing Committee No. 1 may have to consider how to cater for workers such as coalminers who are required to work in a dangerous environment. Two other obvious examples of people who have jobs that require them to enter into dangerous situations are police and fire brigades employees.

It may be cumbersome but at some point down the track in all these reforms it may be possible, without introducing specific bills, to give special recognition to the conditions in which those people work. The example the Police Association gave to me involved a comparison between a police officer who sustained an injury to a finger and an office worker who jammed a finger in the filing cabinet while performing clerical duties. The damaged finger may not function efficiently but it would not affect the office worker carrying out his or her job. A police officer, in trying to restrain a person stealing a car, such as by seizing the steering wheel through the window or taking the keys from the car, may injure a hand or just one finger. That could mean that the officer would not be able to fire a gun and, because of that minor physical injury, would have to leave the police force. Medical panels working out compensation would have to take that into account. The principle involving coalminers could be followed through and applied to other areas in which employees, because of the nature of their jobs, are required to operate in dangerous situations which other workers do not encounter. We support retention of the legislation as it is and do not support the amendment.

**Amendment negatived.**

**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) [2.17 p.m.]: I move:

Page 26, schedule 4.1, proposed clause 3 (3) (b), line 6. Omit "Part 1". Insert instead "Part 2".

The amendment corrects a typographical error in the bill whereby a clause in the regulation-making power incorrectly refers to another part of the bill.

**Amendment agreed to.**

**The Hon. IAN COHEN** [2.18 p.m.]: I will not move Greens amendment No. 19. I move Greens amendment No. 20:

No. 20 Page 26, schedule 4.1 [3], proposed clause 2 (1), line 30. Omit "Schedules 2". Insert instead "Schedules 1".

This amendment allows existing claims to be settled by commutation on the day of the hearing. The amendment affects clause 2 (1) of new part 18C by widening from schedules 2 to 6 to schedules 1 to 6 the schedules of the bill that will not apply to existing claims. Without this amendment existing claims being run before the Workers Compensation Court would not be able to be settled by way of commutation on the day and there would be a requirement to hold separate registration proceedings. This would result in further legal cost and delays, which would not be in anyone's interests. I commend the amendment to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [2.19 p.m.]: The amendment seeks to restrict the changes to commutation procedures to cases involving future claims only. Over recent years a very large number of commutation cases have been occupying the time of the Compensation Court. The new commutation agreement and registration procedures will assist in reducing cost levels. Those new procedures should be available to previous claimants where they are applicable within the terms of the bill. Consequently, the amendment is opposed.

**Amendment negatived.**

**The Hon. PETER BREEN** [2.19 p.m.]: I move Reform the Legal System amendment No. 3:

No. 3 Pages 27 and 28, schedule 4.1 [3], proposed clause 4, line 30 on page 27 to line 15 on page 28. Omit all words on those lines.

This amendment relates to a transition provision for disputes concerning lump sum payments. My amendment relates to the question of retrospectivity. Under the Government's proposal, claims for permanent impairment

compensation with respect to injuries that occurred before the commencement of this legislation are to be assessed under the new scheme. Again, a worker who was injured prior to commencement of the new scheme would have recourse to the old scheme. It is wrong to make the provision retrospective. I commend the amendment to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [2.20 p.m.]: It is a feature of the bill that new claims will be within the jurisdiction of a new workers compensation commission. New claims are claims made after the commencement date, whether the worker's injury was received before or after that date. Accordingly, some claims which currently involve medical issues dealt with by medical panels attached to the Compensation Court will, instead, be dealt with by medical assessments arranged through the new commission. If this amendment were passed, one result would be that the large number of hearing loss claims that merely require an assessment of the percentage of loss suffered would have to be determined in the new commission, rather than being medically assessed. This bill ensures that benefits are calculated in accordance with the law in force at the date of injury. While the bill allows disputes relating to old claims to be dealt with within the new service, this will produce benefits through reduced claim costs and faster processing. The amendment is opposed.

**Amendment negatived.**

**The CHAIRMAN:** Greens amendment No. 21 as circulated cannot be moved because it is the same as Reform the Legal System amendment No. 3, which was negatived.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [2.21 p.m.]: On the basis of discussion on a previous amendment, I do not intend to move Australian Democrats amendments Nos 3 to 6, 9 to 14, 16 to 19 and 24 to 26 inclusive. This does not solve all the clashes between my proposed amendments and other amendments, but it deals with a good number of them.

**The Hon. PETER BREEN** [2.22 p.m.]: I move Reform the Legal System amendment No. 4:

No. 4 Pages 28 and 29, schedule 4.1 [3], proposed clauses 5 and 6, line 16 on page 28 to line 5 on page 29. Omit all words on those lines.

This amendment deals with regulations to transfer existing claims to new procedures. As I said earlier, the draft bill leaves an enormous amount of detail to regulations, and that is particularly iniquitous in this context. The provision for transferring claims enables the Government, by regulation, to decide which existing claims should be determined under the new regime. It is an attempt to introduce retrospective legislation through regulation. If the Government has not yet decided what to do in relation to these provisions, they should simply be omitted. The purpose of my amendment is to delete reference to those provisions. I commend the amendment to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [2.23 p.m.]: It is a feature of the bill that new claims will be within the jurisdiction of a new workers compensation commission. New claims are claims made after the commencement date, whether the worker's injury was received before or after that date. Accordingly, some claims which currently involve medical issues dealt with by medical panels attached to the Compensation Court will, instead, be dealt with by medical assessments arranged through the new commission. If this amendment were passed, one result would be that the large number of hearing loss claims that merely require an assessment of the percentage of loss suffered would have to be determined in the new commission, rather than being medically assessed.

This bill ensures that benefits are calculated in accordance with the law in force at the date of injury. While the bill allows disputes relating old claims to be dealt with within the new service, this will produce benefits through reduced claim costs and faster processing. The amendment is opposed. This amendment is similar to an earlier amendment relating to the transfer of claims from the old system to the new system. However, the current proposal goes further than the earlier item by also seeking to remove the related clause that details how transferred claims will be dealt with. This wider amendment is opposed for the same reasons I canvassed in relation to the other item.

**Amendment negatived.**

**The Hon. IAN COHEN** [2.25 p.m.], by leave: I move Greens amendments Nos 22, 23, 35 and 43 in globo:



No. 22 Page 28, schedule 4.1 [3], proposed clause 5, lines 16-30. Omit all words on those lines.

No. 23 Page 29, schedule 4.1 [3], proposed clause 8, lines 10-13. Omit all words on those lines.

No. 35 Page 38, schedule 4.2 [16], proposed section 251, line 18. Omit "Except as otherwise specifically provided in this Chapter, this". Insert instead "This".

No. 43 Page 42, schedule 4.2 [16], proposed section 259, lines 4-10. Omit all words on those lines. Insert instead:

This Division applies to the making of a claim for compensation after the commencement of this section

Amendments 22 and 23 would delete clauses (4), (5) and (8) of new part 18G, which deal with transitional provisions for disputes concerning lump sum compensation claims, regulations to transfer existing claims to new procedures, and new procedures for making a claim. The bill as it stands provides that an existing injury will be assessed under the new system, including new guidelines. This is retrospective and, therefore, should be deleted. As a matter of principle, the Greens will not accept or support retrospective application of such measures. If there are to be no winners from the change to the new system, it seems only fair that there should also be no losers. Clause 4 grants an arbitrary power to deem a claim a new claim by regulation. This is also retrospective and should be deleted. Amendment 35 will amend new section 251 to read "This chapter applies to and in respect of new claims only". Once again, this provision is clearly retrospective. As the Greens have said in relation to parliamentary superannuation and so on, retrospectivity is unfair and unacceptable. I commend these amendments to the Committee.

**Hon. IAN MACDONALD** (Parliamentary Secretary) [2.27 p.m.]: Greens Amendment 22 would remove the power to transfer claims from the old system to the jurisdiction of a new commission. This means that the two systems would need to operate indefinitely, and clearly that would be unaffordable. As I said before, while the bill is retrospective as to process, benefits will always be calculated in accordance with the law in force at the date of injury. The new dispute resolution system is better for workers because it provides a simpler, fairer and faster means of resolving disputes. The amendment is not appropriate and is opposed.

Amendment 23 would remove the transitional provisions that apply to new claims procedures and claims made after the commencement in relation to existing matters. Those procedures are improvements that will assist with the prompt determination of claims and payment of benefits. Accordingly, this amendment is also opposed. Amendment 43 would remove common law claims from the new claim procedures in the bill. That would not be appropriate for the reasons I have already canvassed. If amendment 35 were accepted, the new procedures for notice of injury and claims would only apply to injuries occurring after the commencement date. By comparison, the bill extends those procedures to notices and claims that arise after the commencement date in relation to existing injuries in some cases. The new procedures will promote quicker payment of claims, with fewer cases being disputed. This will help to reduce costs and will benefit claimants. Accordingly, the amendments are opposed.

#### **Amendments negatived.**

**The Hon. IAN COHEN** [2.30 p.m.]: I move Greens amendment No. 24:

No. 24 Page 31, schedule 4.2 [2], lines 15 and 16. Omit "made by the Minister under this Act".

This amendment affects the definition of the rules on page 31 of the bill. It will read "**Rules** means the Rules of the Commission." This removes the ability of the Minister to make rules. The Greens believe that rules should be made by the commission acting as a court of record, not under the thumb of the Minister. As has been said a number of times, this bill concentrates an enormous amount of discretionary power with the Minister at the expense of public scrutiny and accountability. I ask the Government to support this important amendment.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [2.30 p.m.]: The amendment is designed to change the procedure for making the rules of the commission as provided by the bill, which the bill provides are to be made by the Minister. The Government is not prepared to accept an amendment to that arrangement.

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

**The Committee divided.**

**Ayes, 5**

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

**Noes, 28**

Mr Colless	Mr M. I. Jones	Mr Ryan
Mr Della Bosca	Mr Lynn	Ms Saffin
Mr Dyer	Mr Macdonald	Ms Tebbutt
Ms Fazio	Mr Moppett	Mr Tingle
Mrs Forsythe	Mrs Nile	Mr Tsang
Mr Gallacher	Reverend Nile	Mr West
Miss Gardiner	Mr Obeid	
Mr Gay	Mr Oldfield	<i>Tellers,</i>
Mr Harwin	Mr Pearce	Mr Jobling
Mr Johnson	Dr Pezzutti	Mr Primrose

**Question resolved in the negative.**

**Amendment negatived.**

**The Hon. IAN COHEN** [2.37 p.m.]: I will not move Greens amendments Nos 25 and 26. I move Greens amendment No. 27:

No. 27 Page 31, schedule 4.2 [4]. Insert after line 28:

**[4] Section 30 (1A) and (1B):**

Insert after section 30 (1):

- (1A) Before a WorkCover Guideline, or a regulation (whether made under this Act or the 1987 Act) is published in the Gazette, a copy of the Guideline or the regulation must be provided to the Council.
- (1B) The Guideline or regulation must not be published in the Gazette less than 25 working days after it is provided to the Council.

This amendment inserts in new section 30 a requirement that a copy of any WorkCover guideline or regulation must be provided to the Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales at least 25 working days before it is published in the *Government Gazette*. The amendment would ensure that all stakeholders have an opportunity to analyse the impact of any WorkCover guidelines or regulations, and to present such analysis to the public and to members of the New South Wales Parliament before any guideline or regulation comes into force. The Greens believe that an opportunity for consultation and scrutiny is most important and stands in stark contrast to the way in which the Government has handled this bill and, indeed, the entire WorkCover reform process.

The council encompasses all major stakeholders in workers compensation, employers' representatives, unions and insurance companies. It allows all those bodies to examine the Government's work on an ongoing basis. The way to avoid the type of public disquiet that has been evident in relation to this issue is to consult and allow for public and expert scrutiny, instead of ramming legislation through as quickly as possible. This issue is all about transparency and public accountability. It is a reasonable and sensible amendment that will benefit all sectors of the community. I commend Greens amendment No. 27 to the House.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [2.40 p.m.]: I move:

That Greens amendment No. 27 be amended by deleting:

- "(1B) The Guideline or regulation must not be published in the Gazette less than 25 working days after it is provided to the Council."

If that amendment is effected, the Opposition sees great merit in supporting the remainder of the amendment, which will therefore be:

Page 31, schedule 4.2 [4]. Insert after line 28:

[4] **Section 30 (1A) and (1B):**

Insert after section 30 (1):

- (1A) Before a WorkCover Guideline, or a regulation (whether made under this Act or the 1987 Act) is published in the Gazette, a copy of the Guideline or the regulation must be provided to the Council.

**Reverend the Hon. FRED NILE** [2.41 p.m.]: Perhaps what I have to say is more a question for the Government than anyone else. One of the reasons a great deal controversy has surrounded the WorkCover and workers compensation reforms is the inability of the Occupational Health and Safety Council and the Workers Compensation Advisory Council to function because the council incorporates such a wide range of views through its membership. It is a wonder that it is possible to ever get the council to agree on anything. It may be that at some point the council has to be restructured and streamlined. I would be concerned if the council had some power or control which led to it being unable to operate because of indecision.

**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) [2.41 p.m.]: I think I should keep the argument fairly simple at this point. I am conscious that there has been an attempt to make the amendment much more responsible amendment than it originally was. I note that it has attracted support from the Greens and the Coalition, which is a matter of some interest and importance to the Committee, I am sure. But I have to express one reservation.

**The Hon. Michael Gallacher:** It is all about transparency.

**The Hon. JOHN DELLA BOSCA:** The Leader of the Opposition knows that there is a process about regulations and the *Government Gazette*. In fact, the Hon. Dr Brian Pezzutti reads the *Government Gazette* every week and is well informed about its contents. He is able to quote the Premier's words and, no doubt, the Governor's words in detail, but that is beside the point. I think the advisory council has been doing excellent work. The restructured council provides a lot of useful advice. It is true that one of the reasons for concern about the former advisory council, and perhaps a concern about an advisory council approach generally, is that the advisory council cannot be expected to be Parliament. Parliament should not try to abdicate its responsibility for making political decisions about these matters to an advisory group. One of the unfair suggestions that has been made is that the advisory council be asked to behave as though it is the decision-making body in the process, rather than an advisory group.

In many respects, that has led to an inversion of relationships. The Government's approach has brought a lot more commonsense back into the relationship between the advisory council, Parliament and the Minister. I do not want to have that relationship scrambled again, in the sense of the advisory council being encouraged to regard itself as having some sort of veto power, even if it is an informal, over the regulations. I say that not because I think there is any great problem specifically with adopting the combined Greens-Liberal Party proposition, but rather because I think it sends the wrong message and, in the end result, parliamentarians are the decision makers. Parliamentarians are responsible for the way in which the system works. We can obtain good advice from the experts such as the advisory council. We can ask the council to formulate views and we can test ideas with the council. We can even ask the council to generate ideas under specific briefs, but I do not think we should place the council in the position in which it is expected to be a de facto Parliament.

**Ms LEE RHIANNON** [2.44 p.m.]: I listened carefully to the Minister's comments. I feel that there has perhaps been a misunderstanding or that the Minister has misheard the reasons why the Coalition seeks to remove subsection (1B). As soon as subsection (1B) is removed, clearly there is no confusion about the advisory council being placed in any particular position. All that subsection (1A) would do is require a copy of the guidelines or the regulations to be provided to the council. The comments made by the Minister to the effect that the council is not a decision-making body, and the problems in the past referred to by the Minister are not relevant in the context of this amendment.

The effect of subsection (1A) standing alone is essentially that it would be a gesture of goodwill, recognising that there have been problems in the relationship between the Minister's office and the advisory council at times. Obviously, that will happen, but subsection (1A) makes a simple gesture of saying, "Here it is",

and it will be there for a number of days for the council to look at it. I urge the Minister to reconsider. The comments made by the Minister indicate to me that perhaps he is reading more into the amendment than exists. It is just a simple request. I ask the Minister to reconsider, because that would be a gesture of goodwill towards the advisory council.

**The Hon. JOHN DELLA BOSCA:** I have listened carefully to the arguments. I have made my point for the record. The way in which the workers compensation scheme is administered in this State is the responsibility of Parliament. It is our job. But, as Ms Lee Rhiannon points out, no particular harm is done to the essence of the legislation by the amendment. To underline the Government's preparedness to embrace transparency and in the interest of continuation of the harmony that this Committee has shown so far, I am prepared to accept the amendment in the form put by the new coalition of the Liberal Party, the National Party and the Greens.

**Amendment of amendment agreed to.**

**Amendment as amended agreed to.**

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [2.47 p.m.]: I move Coalition amendment No 4:

No. 4 Page 31, schedule 4.2. Insert after line 28:

**[4] Section 30 (1A) and (1B)**

Insert after section 30 (1):

- (1A) The Council is to cause a statement to be provided to the Minister to be laid before each House of Parliament setting out:
- (a) each advice provided to the Minister by the Council, and
  - (b) actuarial or financial advice in connection with the workers compensation scheme received by the Council.

I continue the Coalition's theme of ensuring a level of probity and reporting back to Parliament. This amendment inserts subsection (1A) into section 30 to allow the whole of Parliament to have an ongoing responsibility to maintain an awareness of the scheme following the implementation of the legislation, if it is passed by this Parliament. The Coalition has done this to avoid a situation whereby, 12 to 18 months down the track, the Parliament is totally without the information that is required and is not in a position to maintain its responsibility to monitor the developments and implementation of the scheme. The amendment fits in with the role of the advisory council and it is an extension of section 30. The effect of my amendment will be to add to the duty of the council to provide advice to the Minister on proposals for WorkCover guidelines and regulations under the workers compensation legislation that the council is to cause a statement to be provided to the Minister to be laid before each House of Parliament setting out each advice provided to the Minister by the council, and actuarial or financial advice in connection with the workers compensation scheme received by the council. This will ensure probity and an ongoing responsibility by this Committee for the bill and its relationship with the advisory council.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [2.49 p.m.]: The Australian Democrats are happy to support the amendment, which will increase the probity of the scheme. We are mindful also of the press release by Kerry Chikarovski of 25 June, which stated:

The New South Wales Opposition will support changes to the workers compensation scheme but only on the conditions that all the guidelines and rules are returned to the Parliament for ratification of statutory implements.

In other words, if the probity changes are not supported—and I do support them—presumably this makes it clear that the Opposition will not support the bill. Obviously, we are looking to hold the Opposition to that position.

**The Hon. MALCOLM JONES** [2.50 p.m.]: I support the amendment. However, I move the following amendment to the amendment:

After the final line of the amendment insert:

- (c) such a report is to be made in respect of each six-month period ending on 30 June and 31 December in a year starting with the six-month period ending on 31 December 2001.

I have moved that amendment because the Opposition amendment makes a statement but does not put a time frame on it.

**The Hon. IAN COHEN** [2.51 p.m.]: The Greens support the Opposition's amendment as it is all part of an open and transparent process of accountability. I will discuss further the amendment of the Hon. Malcolm Jones because although it is appropriate to have a specific time limit, it appears that six months is somewhat too frequent.

**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) [2.52 p.m.]: I point out to the Committee some of the practical difficulties with this amendment. First, the advisory council, as honourable members are aware, is effectively convened as a committee of volunteers. The core group of the advisory council is the two key stakeholders: representatives of the unions and the Labor Council of New South Wales, and representatives of the various employer organisations. There are representatives of medical interests, legal interests, insurance companies and some generality about the way in which the advisory council conducts its affairs. It also has a fair bit of independence. That has been encouraged by me, as Minister, and the Government. The difficulty is that honourable members are starting to treat the advisory council as if it were a formal committee of the Parliament. It is not.

**The Hon. Michael Gallacher**: It was formed by legislation.

**The Hon. JOHN DELLA BOSCA**: Yes, of course it was formed by legislation.

**The Hon. Michael Gallacher**: Then it is a formal committee

**The Hon. JOHN DELLA BOSCA**: The Leader of the Opposition is deliberately playing with words. It does not have a secretary.

**The Hon. Michael Gallacher**: It only exists by an Act of Parliament.

**The Hon. JOHN DELLA BOSCA**: I am telling you the facts of the matter. The advisory council is not designed to report to Parliament. We have the committee proposed by Reverend the Hon. Fred Nile, we have agreed to an internal monitoring of the new scheme, and the scheme has actuaries. We are getting to the absurd stage where the scheme will end up with more people watching it than operating it.

**The Hon. John Jobling**: That is a very smart move.

**The Hon. JOHN DELLA BOSCA**: No, it is not a very smart move because one of the critical things about the scheme has been the will to fix it. The problem is not what needs to be done to develop a strategy but the will to actually bring about the administrative, legislative and cultural changes that are needed. We are not lacking in ideas to fix up the scheme. What is lacking is a preparedness to put together and put in place a strategy based on those ideas. I do not believe that the amendment contributes to that. It does not necessarily do any great damage and I would have no great difficulty or embarrassment with the provision being accepted. However, I repeat that the Minister who proposed and legislated for the advisory council as a de facto parliamentary subgroup to make decisions about the workers compensation scheme and the Parliament did not envisage that. If that is the yardstick by which it must be measured, then it is an unequivocal failure.

It has been said before that there are difficulties when one seeks to fix a stakeholder-based advisory council because there are too many internal trade-offs to allow for the developing of a strategy for change. An advisory council of this nature is useful—and it has done well in working with the Government—in providing a forum by which ideas can be tested, issues focused and a strategy developed. It can also be added to because of the experience and knowledge of the various parties on the advisory council. Again I repeat the advice: it is no good for the Parliament to start treating the advisory council in the job we have given it like some supra-parliamentary committee. That is not appropriate to its roles or for the Parliament to rely on it in that way. I caution the Committee against enthusiastically embracing notions that abrogate our responsibilities as a Parliament and placing those responsibilities on a group of volunteers. Even though those volunteers are experts in their various fields and know a lot about workers compensation, they have not been elected by the people of New South Wales to make decisions about the way in which the scheme should operate. That is our job and we should not abrogate it to someone else.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [2.57 p.m.]: I have listened carefully to what the Minister has said and I congratulate him because he has convinced me even more that we

are 100 per cent spot-on on this. He alluded earlier to the fact that the council was not a formalised body—however, it has been enshrined in legislation. The advisory council only exists by law as a result of this Government's own legislation. As to the underplay with regards to this voluntary group, one need only look at this bill because in new section 30, "Functions of the council", the first six words state, "To provide advice to the Minister". The advisory council is to provide advice to the Minister utilising, first, its formalised role under the legislation and, second, the members' expertise and knowledge of the system because it is an eclectic group of individuals brought together to advise the Minister on proposals for WorkCover guidelines and regulations under the workers compensation legislation.

The Opposition is concerned about the guidelines and the regulations. Who will we consult? We would like to consult experts and we can find that body of experts in this advisory council, which the Government has formalised by legislation. These are the very experts that this Parliament wants to hear from in ensuring that when the regulations and guidelines are pushed through this Parliament later on this year we have it 100 per cent correct. The underplay suggesting that this is somehow a group of people who come together informally to have a bit of chat and a coffee is completely false. They are there for the purpose of discussing WorkCover guidelines and regulations under the workers compensation legislation. The Opposition is not asking the earth.

**The Hon. John Della Bosca:** That is not their responsibility.

**The Hon. MICHAEL GALLACHER:** Look at your own legislation. They are there to provide advice to you on proposals, the WorkCover guidelines and regulations under the Workers Compensation Act. All the Opposition is asking for is that the committee has an opportunity to look at the actuarial and financial advice in relation to the workers compensation scheme received by the council and given to the Minister. We are looking for probity. Who will look at this advice? General Purpose Standing Committee No. 1 will be the body to look at the advice given to the Minister by the advisory council that we have asked for, and also the actuarial and financial advice received by the Minister. General Purpose Standing Committee No. 1 will then be able to use that advice to evaluate what they will be looking for as time goes by.

**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) [2.59 p.m.]: The Leader of the Opposition simply does not understand my point. My point is that we are the people who have to make decisions. The advisory council's role is to give advice. It represents all the various stakeholders in the scheme. Most of the time those people have contradictory views about reform. That is why we have had to go through a fairly harrowing process to kick off, in any serious way, the reform of the workers compensation dispute resolution system that has been gradually drilling the scheme into the ground for the last eight years.

It is extremely important that this Parliament understands that we are the people who were elected to make those decisions. The advisory council's role is to provide to the Minister the advice and actuarial insight received from the various stakeholders and service providers in the scheme. Because of their various professional backgrounds, most of those people know more about workers compensation than the Leader of the Opposition and I too know. It would limit the utility of the advisory council and interfere with its functions if we were to devise a set of rules that provided that everything those people say will be subject to some kind of mini freedom of information requirement, that every dot and jot will have to come before this Parliament. The role of the council is to test ideas, focus options, consider the various opinions of the stakeholders, and test their attitudes and opinions.

**The Hon. John Jobling:** We may not get to hear what they say.

**The Hon. JOHN DELLA BOSCA:** Question time exists for that purpose; Reverend the Hon. Fred Nile's committee exists for that purpose; and all the other forms of parliamentary debate exist for that purpose. I do not want to make a die-in-the-ditch issue over this. I am a little irritated by the fact that the Leader of the Opposition has chosen to use this as a way in which to further limit the utility of the advisory council. The council is performing in a way that is very useful to the scheme and to the Government. I will consider my final position when the debate has concluded.

**Reverend the Hon. FRED NILE** [3.02 p.m.]: I seek clarification of the wording of the amendment. It uses the words "laid before". We normally say "table". I ask whether the words "laid before" mean "tabled".

**The Hon. Michael Gallacher:** Yes, they mean "tabled".

**The CHAIRMAN:** Order! I am advised that "laid before" has the same meaning as "tabled".

**Reverend the Hon. FRED NILE:** The amendment seeks to insert new section 30 (1A) to provide that there should be laid before the Parliament:

- (a) each advice provided to the Minister by the Council, and
- (b) actuarial or financial advice in connection with workers compensation scheme received by the Council.

With regard to paragraph (a), apparently the council generates advice, which I suppose could be letters, reports, memos or statements. Paragraph (b) seems to suggest that the council will receive a lot of material from the various stakeholders and people represented on the council, including plaintiff lawyers and others who have concerns about the legislation, who may have conflicting views, and that all that material must then be sent to the Minister, who will then table it in the Parliament. I do not know whether that is the purpose of the amendment. Without getting into an argument with the Leader of the Opposition, it seems that the amendment will create controversy and provide media bullets because material may come before the council that is controversial and in conflict with the Parliament's policy advice on the legislation. It may be the intention of the Opposition, by way of this amendment, to create controversy, which in turn may distract people from trying to solve the problem. Although some people have said that the council comprises many experts, the council presided over the \$2.18 billion deficit.

**Motion by the Hon. Ian McDonald agreed to:**

That consideration of Opposition amendment No. 4 and the amendment of the Hon. Malcolm Jones be deferred to a later hour of the sitting.

**Consideration postponed.**

**The Hon. PETER BREEN** [3.06 p.m.]: I will not move Reform the Legal System amendment No. 6 as circulated.

**The Hon. IAN COHEN** [3.06 p.m.], by leave: I move Greens amendments Nos 29 and 30 in globo:

No. 29 Page 35, schedule 4.2 [14], line 25. Omit "the Authority is satisfied". Insert instead "on application to the Commission, the Commission in court session is satisfied".

No. 30 Page 35, schedule 4.2 [14], line 29. Omit "Authority". Insert instead "Commission".

These amendments affect new section 235D (2), which is concerned with orders of refunds of overpayment of compensation. The effect of the amendments would be that only the commission would require a worker to make a repayment for overpayment, rather than the current situation in which WorkCover is able to do so. The bill as presently drafted grants too much power to WorkCover. Matters such as refunds for overpayment should be resolved by a court where the rules of evidence, and so on, protect the rights of the worker. It is not appropriate, nor is it consistent with the culture of Australian democracy, to allow such power in the hands of the bureaucrats. I believe that it even surpasses what Centrelink entertains with regard to the people it deals with. I commend the amendments to the House.

**Amendments negatived.**

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [3.07 p.m.]: I move Opposition amendment No. 5:

No. 5 Page 35, schedule 4.2 [14], proposed section 235D, lines 26-29. Omit "as a result or partly as a result of an act that constitutes a contravention of section 235A or 235C (whether or not the person has been proceeded against or convicted for an offence in respect of the contravention)".

This amendment deals with the order for refund of overpayments for compensation. The legislation provides that if the authority is satisfied that a person has received an overpayment as a result, or partly as a result, of an act that constitutes a contravention of new sections 235A or 235C, the authority may order the person to refund the amount of overpayment to the person who made the payment. New sections 235A and 235C relate to fraud provisions within the legislation. The Opposition is not opposed to the suggestion that people who are shown to have committed a fraud upon the scheme should have to pay back any money that they were paid.

The legislation appears to limit the authority's right to seek restitution for overpayments by the contravention of new sections 235A and 235C. The Opposition suggests that the omission of the words "as a

result or partly as a result of an act that constitutes a contravention of section 235A and 235C" removes the limitation on this new section to pursue only those who have committed fraud. This will allow the authority to consider restitution in the case of any person who has received compensation overpayments. In the event of not deliberate fraud but accidental overpayment—it could involve a substantial amount—the authority will be able to seek restitution of that sum.

**Amendment negatived.**

**The Hon. IAN COHEN** [3.10 p.m.]: I do not move Greens amendment No. 31.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [3.11 p.m.]: I move:

No. 6 Page 36, schedule 4.2 [15], proposed section 248A, line 17. Omit "The Minister". Insert instead "The Auditor-General".

The object of this amendment is to bring some probity to this legislation. The Opposition is concerned that the legislation provides that only the Minister may conduct a review of its operation. The legislation allows the Minister to conduct a review 12 months or as soon as practicable following the commencement of part 4. This means that the review would conclude on the eve of the 2003 election campaign. I cannot imagine the Minister for Industrial Relations standing at the dispatch box in this place following that review and saying, "Look, we got it wrong; we made some terrible mistakes and the scheme hasn't turned around at all", and then examining his legislation to find the mistakes.

This could prove to be an excellent piece of legislation, but it is yet to be tested. It applies strict limitations on anyone other than the Minister conducting any sort of review of the legislation. As I have said time and time again, that is the Coalition's fundamental opposition to the bill: we are concerned that there is no opportunity for Parliament to exercise some level of probity. The New South Wales Opposition believes the reference to "The Minister" should be omitted from the new section and substituted with the words "The Auditor-General". We are seeking to ensure that there will be an independent review of the legislation, and I would like to think the Government will consider this amendment seriously.

**Reverend the Hon. FRED NILE** [3.13 p.m.]: I was under the impression that the Auditor-General may review any activity of government at any time, so I do not see the point of Opposition amendment No. 6. The only question that remains is whether to follow up on Greens amendment No. 31, which was not moved, by adding a reference to General Purpose Standing Committee No 1. I move:

That the words "The Minister" be omitted and the words "The Minister in co-operation with General Purpose Standing Committee No. 1" be inserted.

That may allay Opposition fears that the Minister might seek to pursue some political motive in conducting the review.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.15 p.m.]: I am concerned about the amendment moved by Reverend the Hon. Fred Nile. We do not want the legislation to be reviewed by the Minister and General Purpose Standing Committee No. 1; we want the Auditor-General to conduct the review. That is not the same thing, and I definitely do not support the amendment.

**Reverend the Hon. FRED NILE** [3.15 p.m.]: To clarify, I assumed that the Auditor-General would conduct a separate review. That is my point. My amendment will not prevent the Auditor-General from doing that. He is obliged to conduct a review.

**The Hon. RICHARD JONES** [3.15 p.m.]: I have a question for the Leader of the Opposition. Did the Opposition consult the Auditor-General about Opposition amendment No. 6?

**The Hon. Michael Gallacher**: No. There was no need to consult with the Auditor-General.

**The Hon. RICHARD JONES**: It might be courteous to find out whether it would be appropriate for the Auditor-General to conduct such a review.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [3.15 p.m.]: It is not for me to telephone the Auditor-General to say, "Would you be happy to conduct a review?"

**The Hon. Richard Jones**: Would it be appropriate?



**The Hon. MICHAEL GALLACHER:** I do not think it is a matter of appropriateness. First, it is a matter for Parliament to determine whether there should be an independent assessment or review of the legislation after its first 12 months of operation to ensure that its objectives remain valid and that the terms of the workers compensation Act are still the appropriate means of achieving those objectives. Secondly, the Government has stated publicly that it will proceed shortly with its third tranche of reforms, and it has floated the idea of a privately underwritten scheme. So we are talking about a potentially fairly significant review. The Opposition is attempting to enshrine in legislation the provision that the Auditor-General should conduct that review. It is not a case of the Auditor-General's choosing to conduct a review—which is the position stated in Reverend the Hon. Fred Nile's amendment. We are seeking to establish a level of security in the process. Honourable members should bear in mind that we will not necessarily have an opportunity to debate certain parts of this legislation later. This amendment is about ensuring that certain outcomes will be achieved and about introducing a level of probity. I suggest that the public would support the idea of an Auditor-General's inquiry.

**The Hon. RICHARD JONES** [3.17 p.m.]: I think it would be strange to enshrine a reference to General Purpose Standing Committee No. 1 in legislation that will be on the statute books for many years as that committee may not exist in four years. That seems an odd proposition.

**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) [3.18 p.m.]: As drafted, Opposition amendment No. 6 would require a review of the legislation to commence next July. It is questionable whether such a review—whether conducted by the Auditor-General, by Reverend the Hon. Fred Nile, by me or by anybody else, without the gift of foresight—would have much to report on as the commission is unlikely to be fully operational before that time. The arrangement proposed by the amendment may therefore entail a substantial waste of public money. The review clause in the bill is consistent with review clauses in other legislation as a result of the charter of reforms established by Opposition and Independent members of Parliament in the early 1990s under the previous Coalition Government. Similar clauses place responsibility for initiating reviews on the Minister. The proposed review clause gives the commission a full 12 months of operation, which can then be assessed. In this case—although not always—it has nothing to do with the electoral cycle.

I appreciate that Reverend the Hon. Fred Nile is trying to help by seeking to insert a reference to General Purpose Standing Committee No. 1 into the legislation. However, it would probably prove more satisfactory to align the various inquiries and monitoring procedures rather than involving yet another third party, the advisory council, the Minister, the Auditor-General and Uncle Tom Cobleigh in a review of the legislation—and let us not forget that scheme actuaries will also be appointed by the WorkCover board. All those points of transparency are in the operation of the scheme.

As I have indicated in discussions with the Leader of the Opposition, the Government is prepared and is considering the best form of further monitoring the economics of the scheme. The Government has discussed the possibility of approaching Mr Tom Parry of IPART to conduct an external review of the dispute resolution system. I ask honourable members not to support the amendment of the Leader of the Opposition because the Government is prepared to give a commitment that it will approach Mr Tom Parry to conduct an appropriate review, precisely consistent with the general thrust of the amendment of the Leader of the Opposition. That is because the timetable is too tight and there would be nothing to legitimately report on by that time.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [3.21 p.m.]: I ask the Minister to formalise his motion to amend my amendment so that all members will know what we are debating. Then we will be able to either debate my amendment, which is on the record, or first deal in good faith with the Minister's amendment. I suggest the Minister should formally amend my amendment and then we will debate his amendment.

**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) [3.21 p.m.]: I will get some advice on that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.22 p.m.]: The Minister is being somewhat disingenuous. A series of amendments have been moved to his shell legislation to try to give it some probity and to get a handle on what is happening. The Minister says that in a year the scheme will not be sorted out, or if it is sorted out it will not have any sort of a track record by then. The Minister says there will be difficulties with

secretaries and minutes being organised. The track record is that when we came into the Chamber the WorkCover advisory committee, led by Gary Brack, complained it did not get consulted, the unions had pickets because they had not been consulted and a large number of other groups, which I enumerated in my contribution to the second reading debate, said they had not been consulted. The bill is almost a vacuum in the amount of power it gives the Minister to make regulations. We are having great difficulties working out who will report and when. The Minister should not expect this Committee to accept that.

There needs to be a mechanism for serious review. As I have said, this so-called crisis has been precipitated by new actuarial figures which show that the deficit has blown out. We have not yet been given the discount rate that leads to the figures. Is the blow-out in the six months from 31 June 2000 to 31 December 2000 a real one or is it estimated on an actuarial method? That is the scare that brought us here. We have not been supplied with that level of accounting. We need a higher level of accountability. It is not good enough just to give an assurance on the fly that Tom Parry, who is well respected at IPART, will sort out the matter. As the Leader of the Opposition said, a formal motion needs to be worked out. It is extraordinary at this late stage that we are working it out on the fly in Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [3.25 p.m.]: I have been a member of this Chamber for about 13 years and in that time we have worked out many matters on the fly. It is probably best not to proceed that way, but we are trying to work out an appropriate resolution that meets the wishes of this Committee. In effect, we are pausing for a few minutes to work out a common agreement, and that is a good consensual way to work. Luckily, we have the Hon. Richard Jones, who is prepared to find a way through various situations at times, unlike the Hon. Dr Arthur Chesterfield-Evans, who just wants to throw a bit of oil or petrol onto any little scenario as he sees fit.

**Reverend the Hon. FRED NILE** [3.25 p.m.]: The Hon. Richard Jones was concerned about the functions of General Purpose Standing Committee No. 1. To my recollection that committee will make quarterly reports and then a report in 2002. The committee has an ongoing role to monitor workers compensation. I would assume that would include a review of the amendments. As distinct from the Minister, General Purpose Standing Committee No. 1 has public hearings and invites union representatives, injured workers and others to appear before it to get information on the impact of the amendments on workers compensation. That is what I meant when I said it would assist the Minister if we did that in co-operation.

**The Hon. JOHN JOBLING** [3.26 p.m.]: There are some options available. We are looking at a body that has competence and ability in this area. The Auditor General is a statutory body with specific ability. That question that a body "may" do something is not positive enough. The Leader of the Opposition made it clear that the Opposition wants to have a firm and clear understanding. The Minister understands where the Opposition is coming from in that regard. If the word "Minister" were deleted and "IPART" inserted instead, that statutory body would be able to achieve the end that we want equally as well as the Auditor General. The Minister said there is not much to review in the time. It is my understanding that the scheme will get under way fairly quickly. The legislation refers to it happening within 12 months. It would seem to me that 31 December 2002 is a reasonable date—it is more than 12 months. If somebody wants to change it to read "IPART" the Opposition would be satisfied. The date needs to be firm because "or as convenient" is too open-ended and will not achieve the ultimate end of security and protection that the Opposition wants.

**The Hon. John Della Bosca:** How about June 2003?

**The Hon. JOHN JOBLING:** There is a big difference between June 2003 and December 2002. Eighteen months is a reasonable time to assess what is happening. The Government might say that the scheme has worked brilliantly and it is great and everyone is better off but the Opposition—

**The Hon. Richard Jones:** That is the next amendment.

**The Hon. JOHN JOBLING:** It is part and parcel of our understanding of what we would like to happen. I see that the two are related. The first part deals with the problem of deleting "Minister" and inserting instead "Auditor-General" or alternatively "IPART". We think the eighteen months is plenty of time to look at the scheme. Both sides will then know whether it is a great success or a failure. If it is a failure it will be flagged early enough to ensure something is done about it rather than waiting for another six months during which time it would go further down the black hole. It would be excellent if the Minister could move in that direction.

**The Hon. RICHARD JONES** [3.29 p.m.]: I move:

That the amendment be amended by deleting the words "Auditor-General" and inserting instead "Independent Pricing and Regulatory Tribunal".

**Amendment of the Hon. Richard Jones of the amendment agreed to.**

**The CHAIRMAN:** Order! The proposed amendment of Reverend the Hon. Fred Nile cannot proceed, because the word "Minister" has been deleted.

**Amendment as amended agreed to.**

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [3.30 p.m.]: I move opposition amendment No. 7:

No. 7 Page 36, schedule 4.2 [15], proposed section 248A, lines 23-26. Omit all words on those lines. Insert instead:

- (2) The review is to be undertaken as soon as possible after the period of 12 months from the date of assent to the *Workers Compensation Legislation Amendment Act 2001*, and the Auditor-General is to use his or her best endeavours to ensure that it is completed by 31 December 2002.
- (3) Within 1 month of the completion of the review, the Auditor-General is to:
  - (a) cause a statement setting out the results of the review to be provided to the Minister to be laid before each House of Parliament, and
  - (b) give a copy of the review to the Council.
- (4) The Council is to cause a statement setting out its views, if any, on the review to be provided to the Minister to be laid before each House of Parliament within 1 month after the Council receives the copy of the review.
- (5) If a House of Parliament is not sitting when a statement is sought to be laid before the House, the statement is to be presented to the Clerk of the House concerned.
- (6) The statement:
  - (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 statement 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 statement by the Clerk.

This amendment continues the Opposition's line in relation to the review of the legislation.

**The Hon. RICHARD JONES** [3.31 p.m.]: I move:

That the amendment be amended by deleting the words "Auditor-General" wherever appearing and inserting instead "Independent Pricing and Regulatory Tribunal".

**Amendment of amendment agreed to.**

**Amendment as amended agreed to.**

**Ms LEE RHIANNON** [3.32 p.m.]: I will not move Greens amendment No. 32. By leave, I move Greens amendments Nos 39 and 49 in globo:

No. 39 Page 39, schedule 4.2 [16], proposed section 254, lines 11 and 12. Omit all words on those lines. Insert instead "that any of the following circumstances apply:"

No. 49 Page 46, schedule 4.2 [16], proposed section 264 (4), line 6. Omit "there was a reasonable excuse for". Insert instead "exceptional circumstances caused".

We believe that the term "special circumstances" in new section 254 will prejudice the ability of the worker to pursue compensation even if there is a reasonable excuse for failing to give notice of the injury. Often people are injured and it is not until a later time that the seriousness of the injury becomes apparent. The amendment does not alter the types and categories of excuse, for want of a better word, but removes the pejorative term "special", which we believe will create too high a bar. Again, this amendment will tighten up the system and ensure that people are not locked out. There are many perfectly fair and reasonable reasons why a worker may not have given notice of an injury in the first instance, and a fair system would not exclude and punish those people.

New section 264 (4) relates to the action by an employer in respect of claims, injuries and compensation. The bill in its current form gives an employer a way of avoiding a conviction for an offence if the employer has, to use the language of the bill, a reasonable excuse for not having lodged a claim, responded to a request or, more seriously, passed on compensation money to a worker. That is the reason we are targeting the words "reasonable excuse": the Greens believe it is simply too broad. It would be more appropriate to replace it with "exceptional circumstances".

The term "reasonable excuse" may facilitate frequent and even systematic avoidance of employers' obligations. We have heard too many examples of that happening and for that reason we believe that this aspect of the bill warrants tidying up. We hope honourable members see their way free to supporting these amendments.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.35 p.m.]: I have seen a number of examples of people who do not report an injury, often simply because they do not recognise the significance of the injury at the time. They say, "Oh, well, I thought it was just a thing that would go away in a couple of days," but, of course, it turned out to be more serious. These sorts of things are not covered by the special circumstances clause. That clause may seem clear to those familiar with compensation terminology and the types of conditions in workers compensation, but someone who cuts a finger or suffers a back injury and thinks the injury will settle down, but it does not, is often excluded from making a claim.

I remember examining a girl in her early twenties. She had an appalling back condition with no chance of being employed. I asked her, "How on earth have you lived with this terrible back? When did you get it?" She said, "I was working in Kmart on my holidays. I injured my back. I always thought it would clear up. I've had a crook back for years." I asked her, "What do you do?" She said, "I've been unemployed and I basically hang around at home." Some years had gone by and she thought she had better do something with her life and get a job. I told her that her back was terrible and she should have had an operation. That was a case of someone who thought the problem would go away and had carried on with the pain for some time. Quite genuine cases do fall through the cracks, and provision should be made for them. I support the amendment.

**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) [3.37 p.m.]: The Government does not accept either amendment. The first amendment is opposed simply because the Government believes it is unnecessary. It provides that claims remain valid if failure to give proper notice of an injury is due to special circumstances.

Ms Lee Rhiannon surprised me by suggesting that the word "special" in this context might be considered pejorative. I would not have thought that "special" in its normal meaning would be considered a pejorative word. The bill lists a number of circumstances that might otherwise be regarded as special, such as, ignorance, a mistake and so forth. Therefore it is contained explicitly within the bill.

What things could be considered "special" other than in the normal or typical process? I do not understand the honourable member's concern. The amendment removes the description of the list of circumstances but does not remove it. The possibility is that the amendment could unintentionally—I am sure this is not the honourable member's intention—affect the bill so as to lessen the object of the Act of protecting injured workers. I do not say that it will do that, but I believe supporting the amendment adds an unnecessary complication. The amendment to new section 265 is more substantive and again the Government is unable to accept it. It would undermine the early notification objectives. The special circumstances currently described in the bill make this less clear and open to litigation.

The section to which the amendment relates requires employers to forward claim documents to the insurer within seven days and to promptly pass on compensation money to the worker. Those provisions

essentially are a continuation of established requirements, which are relocated by the bill. The proposed amendment relates to the defence available to an employer who does not comply with those requirements. The bill puts that defence of "reasonable excuse" in line with the provision that has applied for a number of years.

The proposed amendment seeks to replace that with a reference to "exceptional circumstances". I am not sure whether that could cover a range of excuses from "the dog ate my homework" through to "my house burnt down," but the accepted language "reasonable excuse" will not provide defendants, insurance companies or employers with an endless paddock of options to avoid their responsibilities.

As I think I have explained on a number of occasions in relation to this bill, it is one in respect of which the key stakeholders have lived with trade-offs, some of which they find uncomfortable. I might add that this is one of those sections that many employers throughout the State have a great deal of trepidation about. I think it is as strong as the Government needs it to be in order to put in place a stricter regime of payment of benefits to workers in a timely and proper fashion. Subject to some review later down the track, I think that a reasonable excuse will be an appropriate defence in this particular case. I ask the Committee to reject both amendments.

#### **Amendments negated.**

**The Hon. IAN COHEN** [3.41 p.m.], by leave: I move Green amendments Nos 40 and 41 in globo:

No. 40 Page 39, schedule 4.2 [16], proposed section 254, lines 27 and 36. Omit "or shop" wherever occurring. Insert instead "shop, construction site, school, laboratory or other workplace".

No. 41 Page 40, schedule 4.2 [16], proposed section 256, lines 24 and 26. Omit "or shop" wherever occurring. Insert instead "shop, construction site, school, laboratory or other workplace".

These amendments seek to broaden the concept of the types of workplaces. Amendment No. 40 will amend section 254 by omitting "or shop" wherever occurring and replacing those words with "shop, construction site, school, laboratory or other workplace". This is to ensure that a summary of compensation rights is posted in a workplace and that a worker's right to claim for an injury is not removed because notice has not been given in the specified time. It would be unreasonable to expect workers to know that they have to give notice within a certain 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) [3.42 p.m.]: The Government does not support Greens amendments Nos 40 and 41, again because they would add unnecessary complications to a provision that otherwise is fairly clear. The bill continues existing requirements for a register of injuries to be kept in factories, workshops, offices, shops, mines and quarries, and extends it to construction sites.

The suggested amendments seek to extend the requirements further, to schools, laboratories and other workplaces. The provision as it exists in the bill would apply to workplaces with a fixed location. The suggested general extension of the provisions to all workplaces, not defined in the amendment, would need proper examination before adoption. The Government does not have objection to the principles behind these amendments but simply objects to the Parliament moving to change this traditional provision in a way that may have some unintended consequences.

Other amendments are to be moved in relation to occupational health and safety regulations. Before amendments like this could be accepted, we need to be clear as to which direction the Parliament and the Executive Government will take. In relation to the specific workplaces that the Hon. Ian Cohen seeks to insert, a reading of the Act would indicate that that normally would include schools and laboratories. Obviously, the register of injuries would be kept in a relevant office. So I think a reasonable assumption is that most workplaces, such as schools and laboratories, have an office attached.

#### **Amendments negated.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.46 p.m.], by leave: I move my amendments Nos 7 and 8 in globo:

No. 7 Page 42, schedule 4.2 [16], proposed section 260. Insert after line 13:

- (2) A claim may be made to the Authority, to the employer of the worker or to the employer's insurer and once a claim is made:
  - (a) if it is made to the Authority, the Authority is to notify details of the claim to the worker's employer and the employer's insurer,
  - (b) if it is made to an employer, the employer is to notify details of the claim to the Authority and the employer's insurer,
  - (c) if it is made to an insurer, the insurer is to notify details of the claim to the Authority and the employer.
- (3) The Authority must:
  - (a) use reasonable endeavours to ensure that the form in which a claim is to be made is readily available from medical practitioners and offices of Australia Post, and
  - (b) keep records of all claims made or notified to it.

No. 8 Page 42, schedule 4.2 [16], proposed section 260, line 14. Insert "further" after "may make".

It might be noted that the Construction, Forestry, Mining and Engineering Union [CFMEU] has made great play of the fact that a number of people in the building industry in particular underpay premiums or misclassify their workers. Many building industry subcontractors do not carry the correct insurance, according to the CFMEU. I said in my second reading speech that a large number of people are not complying with their obligations. I must say I have said little in praise of WorkCover, but its database and investigations have enabled that body to achieve some recent successes in finding people who are not paying premiums. When WorkCover investigates these matters, it gets a high return.

The idea of making forms available in a number of different places is that if an injured worker fills in a form in a doctor's surgery or at a post office and sends it direct to WorkCover, rather than through the employer, there is one step less in the form getting to WorkCover. A considerable number of forms, according to Injuries Australia, do not make it to WorkCover; they stop with the employer, particularly if the employer is not familiar with the processes or, perish the thought, is not properly insured.

If the danger from the employer's point of view is that a claim will come from an injured employee directly to the insurer or to WorkCover and they will be found not to be insured, that is a great incentive for them to be insured. In a sense, it is a compliance strategy for payment of premiums, and as such is quite significant and important. From the points of view of convenience, certainty of getting forms lodged, and compliance with payment of premiums, these amendments should be supported.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [3.48 p.m.]: Australian Democrats amendments Nos 7 and 8 would allow workers compensation claims to be lodged by workers with the WorkCover Authority as an alternative to lodging them with their employer or its insurer. WorkCover, however, does not have the resources to operate as a clearinghouse for claims. It is essentially a regulatory authority. Additional costs arising from the proposal would be passed on to employers through the administrative component in premiums. It is important that claims be made directly on the employer, or alternatively the insurer, so that the injury management process can be activated quickly for the mutual benefit of the worker and the employer.

The bill includes provisions for standardisation of notices and claims forms. The intent is to use the guidelines to provide a seamless claim process with the ultimate aim of reducing reliance on paper-based claims systems. The suggested amendments seem to be against the direction of these initiatives. Their intention may be to allow WorkCover to make records of claims. However, WorkCover already has a detailed system in place for the collection of claims statistics from insurers. It also receives notification of serious accidents directly from employers under the occupational health and safety regulations. The amendments are opposed.

#### **Amendments negatived.**

**The Hon. IAN COHEN** [3.50 p.m.], by leave: I move Greens amendment Nos 45, 46 and 47 in globo:

No. 45 Page 43, schedule 4.2 [16], proposed section 260 (5), line 17. Insert "or because of a minor defect in form or style" after "cause".

No. 46 Page 43, schedule 4.2 [16], proposed section 260 (5), (6) and (7), lines 12, 20 and 23. Omit "Guidelines" wherever occurring. Insert instead "regulations".

No. 47 Page 43, schedule 4.2 [16], proposed section 260 (6) and (7), lines 18 -21. Omit "WorkCover Guidelines" wherever occurring. Insert instead "regulations".

Amendment No. 45 will ensure that a minor mistake does not cause a claim to be considered false or misleading. The amendment inserts in new section 260 (5) the words "or because of a minor defect in form or style" after "cause", in the context of false or misleading statements. This is very important because a minor defect, an innocent mistake, should not cause a worker any disadvantage. It certainly should not lead to his or her claim being considered false or misleading.

Amendments Nos 46 and 47 deal with subsections (5), (6) and (7) of new section 260, which omit the words "guidelines" or "WorkCover guidelines" wherever they occur and replace them with the word "regulations". The advantage of replacing "guidelines" with "regulations" is that regulations are more easily reviewable. Once again, this goes to the important characteristic of transparency and public accountability. I commend the amendments.

**The Hon. MALCOLM JONES** [3.52 p.m.]: I support Greens amendment No. 45. Over the years I have been involved with many people over filling in claims forms. If one of the objectives is to keep the legal profession at arm's length, especially for minor claims, this is an extremely important amendment. People who find it difficult to complete forms should not be persecuted for a "minor defect in form". I also support the amendment for another reason—something that has not been spoken about a great deal during this debate. Workers compensation covers not only accidents but also industrial diseases. Industrial diseases can grow over time, and their symptoms could be incremental. It can be difficult for people to describe that when completing a form.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [3.54 p.m.]: The Opposition supports Greens amendment No. 45. I do not need to add to the reasons given by the previous two speakers in support of the amendment. Minor mistakes on a form should not be a reason to rule people out. I am sure there will be no trouble with interpretation. However, we cannot support Greens amendments Nos 46 and 47.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [3.54 p.m.]: The Government supports Greens amendment No. 45. Amendments Nos 46 and 47 will replace provisions requiring guidelines for detailed claim procedural matters with provisions requiring regulations, proposed guidelines and claims procedures. Associated matters will promote the advantages mentioned earlier regarding prompt claim processing and payments. The Government requires a proper mechanism in this regard. Amendments Nos 46 and 47 are opposed.

**Greens amendment No. 45 agreed to.**

**Greens amendments Nos 46 and 47 negatived.**

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [3.56 p.m.]: I move Opposition amendment No. 8:

No. 8 Page 47, schedule 4.2 [16], proposed section 267, lines 7-10. Omit all words on those lines. Insert instead:

- (2) A person is considered to have a reasonable excuse for not commencing weekly payments if the person suspects on reasonable grounds that the initial notification was false or misleading in a material particular. The WorkCover Guidelines may make further provision for what does or does not constitute a reasonable excuse for the purposes of this section.

The amendment seeks to clarify the legislation, which is wanting in this area. A person can be assured that he or she will not be penalised for failing to commence weekly payments if the person believed on reasonable grounds that the initial notification was false or misleading.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [3.58 p.m.]: Under the bill procedural details of the kind to which the amendment refers will be covered in the guidelines. The Government considers that the approach in the bill is appropriate in that regard and, consequently, the amendment is opposed.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [3.59 p.m.]: The Opposition recognises the Government's position. However, it is our intention to insert in the legislation that fraud, with regard to provisional payments, is most certainly a significant concern to many employers who are interested to see what provisions will be made to limit the ability of individuals to take advantage of various aspects of

professional payment aspects of the legislation. The amendment endeavours to encapsulate the distinction that does not currently exist. We are being asked by the Government to wait for the guidelines. The Opposition wants it clearly defined in the legislation at this time that a person who suspects on reasonable grounds that the initial notification was false and misleading will not be subject to an order for failing to commence early payment or provisional weekly payments. This amendment will simply ensure that false or misleading statements are addressed by the legislation rather than the guidelines.

**Ms LEE RHIANNON** [4.00 p.m.]: The Greens oppose the amendment moved by the Leader of the Opposition. Clearly, we are seeing the double standards of the Opposition in this Chamber and in the Legislative Assembly. The Opposition adopted tactics in this Chamber that are different from those that were adopted in the other place. It is not pleasant to witness the tactics of such a pathetic Opposition. Mr Hartcher, in leading for the Opposition in the Legislative Assembly, said in debate on this bill:

This legislation will clearly not help the workers. They will not benefit.

He tried to pick up on the theme that workers would be hard done by. If honourable members choose to agree to this amendment, the Coalition effectively will have ensured that not only did it not help workers; it also disadvantaged them and made their lives an absolute misery. It is a disgrace that we are having to debate such an amendment.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.01 p.m.]: This is the first time that I entirely agree with a statement made by Ms Lee Rhiannon.

**Ms Rhiannon**: It is not the first time. You have supported some of our amendments.

**The Hon. IAN MACDONALD**: This is the first time that I have supported a statement made by the honourable member. Effectively, this provision would undermine the injury management impetus of the bill. Insurers would knock back claims rather arbitrarily under the amendment being proposed by the Opposition.

**Reverend the Hon. FRED NILE** [4.01 p.m.]: The Christian Democratic Party does not support the amendment moved by the Leader of the Opposition. There has been a lot of discussion between union representatives and employers. To suddenly tilt the legislation in the direction proposed by this amendment would be akin to breaking the agreement. The Government would then have to consult with unions to determine whether or not they are happy with such a provision. Obviously, they would not be happy with such a provision.

**Amendment negatived.**

**The Hon. IAN COHEN** [4.02 p.m.]: I move Greens amendment No. 50.

No. 50 Page 52, schedule 4.2 [16], proposed section 280, line 24. Omit "\$1, 000". Insert instead "\$5,000".

This amendment, which relates to new section 280, seeks to replace the amount of \$1,000 with an amount of \$5,000. That would mean that, if an insurer made a provisional acceptance of liability for medical expenses compensation, the injured worker could receive up to \$5,000 rather than up to \$1,000 to cover medical expenses. The Greens consider an amount of \$5,000 to be a much fairer and more reasonable figure, given the often high costs of medical services. A sum of up to \$5,000 would allow for multiple procedures and would enable early treatment, which is often more effective in returning the worker to employment and resolving the injury.

Physiotherapy and early intervention can be effective in alleviating workplace injuries. This provision, which would be seen by all participants as money well spent, is in keeping with the significant costs that are incurred for that type of early remedial support. With soft tissue injuries that type of remedial support can be effective and save a lot of money in the long term. It would be a pity if injured workers missed out on effective early intervention because they do not have enough money. In this day and age I believe that \$5,000 is a reasonable figure. I commend Greens amendment No. 50 to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.03 p.m.]: The Government has carefully considered the amendment moved by the Hon. Ian Cohen on behalf of the Greens. On balance, having taken into account all the issues that are involved, the Government will support this amendment.

**Amendment agreed to.**



**The Hon. IAN COHEN** [4.04 p.m.]: I move Greens amendment No. 53:

No. 53 Page 53, schedule 4.2 [16], proposed section 281(2), lines 10-17 Omit all words on those lines. Insert instead:

- (2) A claim must be so determined within 2 months after the claimant has provided to the insurer all relevant particulars about the claim.

New section 281 (2), as it currently stands, states:

A claim must be so determined:

- (a) within 1 month after the degree of permanent impairment first becomes fully ascertainable.

There is a real risk that this will enable medical specialists to state that an injury has not stabilised and thus delay the claim. That could result in a situation in which workers are severely disadvantaged because their injury takes some time to stabilise. In the meantime they are out of work and out of pocket and cannot have their claims finalised. This amendment is necessary to avoid this clear potential for unfairness in the bill as it stands. I consider this to be a reasonable amendment for the workers of New South Wales. I commend amendment No. 53 to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.05 p.m.]: The relevant provisions in the bill require lump sum claims to be determined within two months after relevant particulars are provided, or within one month after the degree of impairment is fully ascertainable, whichever is the later. The proposed amendment would replace that provision with a provision that such claims are to be determined within two months after particulars are provided. The Government's position is that the form of the provision in the bill is correct.

As the provision depends on the making of impairment guidelines it will not be commenced until those guidelines are finalised, based on continuing consultations. It is entirely inappropriate for claims to be determined by the employer or insurer before the degree of permanent impairment can be properly assessed. In some cases it will result in undercompensation if the full symptoms have not stabilised. In other cases it will result in overcompensation. Consequently, the Government opposes this amendment.

**Amendment negatived.**

**The Hon. IAN COHEN** [4.07 p.m.]: I move Greens amendment No. 56:

No. 56 Page 54, schedule 4.2 [16], proposed section 282 (1) (c), lines 14-18. Omit all words on those lines. Insert instead:

- (c) any previous injury,

This amendment refers to new section 282 (1) (c), which has regard to the relevant particulars of a claim for workers compensation. The bill, as it stands, requires a worker in making a claim to give details of any pre-existing condition or abnormality. The amendment would reduce this to simply a requirement to give details of any previous injury. Our concern at this point is that pre-existing conditions or abnormalities should be a matter for medical experts to deal with in their medical reports rather than material for lawyers to concern themselves with. Once lawyers start getting into the business of pre-existing conditions or abnormalities, science and medical facts will quickly go out the window. The Greens believe that this amendment is important in order to protect claimants and safeguard the role of medical science in the assessment process. I commend Greens amendment No. 56 to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.08 p.m.]: The bill states that lump sum claimants can be required to provide certain relevant particulars. Those particulars are listed as including details of "any previous injury or any pre-existing condition or abnormality to which part of the claim for impairment may be due". That aspect of particulars relates to the established provision that requires the part of a disability due to a previous injury, condition or abnormality to be deducted from lump sum entitlements, that is, on the basis that employers should be liable only for a disability that is actually caused by the work injury.

The bill continues that existing deduction provision in relation to the proposed new impairment lump sum benefits. However, the proposed amendments would remove from the list of particulars the reference to "any pre-existing condition or abnormality" leaving only "previous injury". It is reasonable for the provision to remain as drafted for consistency with deductions relevant to calculation of lump sum entitlements, otherwise

the lack of those particulars may delay claim payments and add to disputes. The amendment proposes associated revisions which are at odds with the aim of promoting quick claim resolution. The amendment is opposed.

**Amendment negatived.**

**The Hon. IAN COHEN** [4.09 p.m.]: I move Greens amendment No. 58:

No. 58 Page 54, schedule 4.2 [16], proposed section 282 (1) (e), lines 22-24. Omit all words on those lines.

This amendment would delete paragraph (e) of new section 282 (1), which requires information relevant to a determination as to whether or not the degree of permanent impairment results from an injury or change in providing relevant particulars about a claim. Once again this information, whether the degree of permanent impairment will change, is properly the subject of expert medical reports. It is simply not something on which a claimant or a lawyer is qualified to give an opinion. I commend Greens amendment No. 58 to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.09 p.m.]: For the reasons given earlier in relation to a previous amendment moved by the Greens, the Government opposes this amendment.

**Amendment negatived.**

**The Hon. IAN COHEN** [4.10 p.m.], by leave: I move Greens amendments Nos 59 and 60 in globo:

No. 59 Page 54, schedule 4.2 [16], proposed section 282 (1) (g), lines 28 and 29. Omit all words on those lines.

No. 60 Page 55, schedule 4.2 [16], proposed section 282. Insert after line 5:

- (4) Any dispute about the sufficiency of the particulars about a claim is to be referred to the Commission for resolution.

Amendment 59 deletes new section 282 (1) (g), which allows WorkCover to include any matters that it chooses as particulars relevant to a claim for workers compensation. This amendment is very important. As the bill stands WorkCover has a blank cheque to insert matters that would delay claims unnecessarily and unfairly. The list of particulars required as set out in the bill is quite exhaustive and thorough and it does not seem necessary to give WorkCover such broad scope to make them up as it goes along. The particulars of a claim are obviously very important, if a claimant is to receive fair and expeditious compensation. It is vital that they are not overly cumbersome or arbitrary.

Amendment 60 amends new section 282 by inserting a subclause that stipulates that any dispute regarding the insufficiency of the particulars of a claim must be referred to the commission for resolution. As the bill stands there are no adequate mechanisms to resolve disputes as to the particulars of a claim. Given the disparity of resources and bargaining power between a claimant and an insurer, it is important to have resolution procedures that protect claimants. Referring any dispute to the commission seems to the Greens to be the best and fairest way of moving the claim forward whilst protecting the interests of all parties. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.11 p.m.]: The same basic thrust of my response to amendment 56 applies to Greens amendments 59 and 60,. Consequently, the Government will oppose the amendments.

**Amendments negatived.**

**The Hon. MALCOLM JONES** [4.12 p.m.], by leave: I move Outdoor Recreation Party amendments Nos. 1 and 2 in globo:

No. 1 Page 55, schedule 4.2 [16], proposed section 283, lines 14-16. Omit all words on those lines. Insert instead:

- (2) A person is considered to have a reasonable excuse for failing to determine a claim as and when required by this Part if the claimant has failed to comply with any reasonable request by the person to provide a medical report or other report (unless that failure is due to a failure by the provider of the report to provide it after a request by or on behalf of the claimant to do so). The WorkCover Guidelines may make further provision for what does or does not constitute a reasonable excuse for the purposes of this section.

No. 2 Page 56, schedule 4.2 [16], proposed section 284, lines 5-8. Omit all words on those lines. Insert instead:

- (5) A person is considered to have a reasonable excuse for failing to determine a claim as and when required by this Part if the claimant has failed to comply with any reasonable request by the person to provide a medical report or other report (unless that failure is due to a failure by the provider of the report to provide it after a request by or on behalf of the claimant to do so). The WorkCover Guidelines may make further provision for what does or does not constitute a reasonable excuse for the purposes of this section.

During debate little has been made of false claims for compensation for sickness, but I guarantee to the Committee that they do exist. People do make false claims, and they do so usually for a few days off here and there rather than claiming major injury, although false claims for major injury are also made. The speed with which the Government seeks to have claims assessed, provisional assessment, will make it very easy for people to get away with making small claims.

I think it is absolute folly to stint on the assessment process of determining the claim. New section 283 relates to a penalty against determining a claim—which would be an officer, probably, of an insurance company—saying that someone has to make a claim within a specified time otherwise that person will receive a penalty consisting of 50 penalty units, which is \$5,500 or thereabouts. That is foolish, in my opinion. It is foolish not to assess claims properly. To assess claims properly the assessor has to be provided with relevant documents.

One matter that has been overlooked during the entire debate is that there are not only injuries as a result of accidents, which are sustained and covered by WorkCover; there is also industrial sickness. In the case of industrial sickness, it is invariably a requirement of the assessor to obtain a past medical attendance report. Acquiring a past medical attendance report is not an easy thing to do in every situation. Many doctors work in a suburban environment where their surgery is in a room adjacent to the house; they do not employ a locum when they go on holiday; they do not employ professional assistants—they might have a family member there who may not bring these things to the doctor's attention for prompt completion and return. Under the provisions of this bill an assessor will be forced to make a hasty and uninformed decision about a claim.

I think this is fraught with danger and I urge the Government to consider making proper assessment of even the most minor claim, because minor claims, once they are approved, can escalate into major claims. Once the approval is given it has an effect on the ongoing determination of that case. I cannot emphasise too strongly how this initial period requires proper assessment. The vast majority of requests for past medical attendance reports will be processed quickly by doctors. The bill uses the expression "reasonable excuse". I want the legislation to indicate what can be a reasonable excuse so that there will not be a plethora of charges against insurance company personnel.

I must also point out to the Government that if it is looking to the insurance industry to come to the party and to help run these schemes, with the talent that exists in the industry, persecuting it with this clause is a silly path to follow, without expanding on what is a reasonable excuse. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.17 p.m.]: The proposed amendments seek to specify one of the circumstances in which an insurer would be regarded as having a reasonable excuse for failing to determine claims within the relevant time. The Government supports the thrust of amendments to more closely define what constitutes a reasonable excuse. This important aspect of the claim provisions needs careful consideration. The problem with the amendments are that they shift the balance more towards the insurer. As the bill has been drafted, the insurer could make a request for any report related to the claim, and could delay payment until the report has been provided—possibly including reports not favourable to the worker. This power is broader than the obligations that apply to insurers in relation to disclosure of reports. The situation where a reasonable excuse exists will need to be specifically set out, and the bill intends that such procedural details are more appropriate for coverage in the guidelines. Accordingly, the amendments are opposed.

**The Hon. MALCOLM JONES** [4.18 p.m.]: I want to contradict the Hon. Ian Macdonald, who spoke about reports that may not be favourable to the injured. Absolutely! Of course! It is for the assessor to determine what he requires. Insurance assessors are professional people. They have to do their job speedily and effectively. It is not in their interests to hold up these things. Certainly at times reports will come in that may be to the detriment of the injured worker. That is what an assessor's job is. He has to assess the claim. It is not a straightforward rubber stamping effect. If it is a rubber stamping effect, if that is what the Government is seeking to achieve, it will have more claims than it can poke a stick at. The Government will have an epidemic of small claims, worse than the current situation, because it is going to make it so easy.

**The Hon. IAN COHEN** [4.20 p.m.]: I think the honourable member is confusing wrecked four-wheel-drive outdoor vehicles with human beings.

**Amendments negatived.**

**The Hon. IAN COHEN** [4.20 p.m.]: I move Greens amendment No. 61:

No. 61 Page 58, schedule 4.2 [16], proposed section 290 (3), line 26. Insert ", except with the leave of the Commission" after "Commission".

This amendment would have the effect of allowing the commission to declare admissible a document that a party to a dispute has failed to provide in contravention of the Act. The Greens believe this amendment represents an important escape clause, allowing the commission to accept a document if it believes there are sufficient extenuating circumstances to explain its not having been provided in the first place. The Greens are concerned that a worker may accidentally or unconsciously forget to provide a document, and without this amendment there would be no opportunity to put that information before the court. A workplace injury can be a serious ongoing disadvantage in life, and the commission should not be forced to deny a worthy claim simply on the basis that documentation was received late, particularly if there are valid extenuating circumstances. I commend Greens amendment No. 61 to the Committee.

**Amendment negatived.**

**Ms LEE RHIANNON** [4.21 p.m.], by leave: I move Greens amendments Nos 62, 96 and 97 in globo:

No. 62 Page 58, schedule 4.2 [16], proposed section 290. Insert after line 35:

- (6) However, nothing in this section requires a party to comply with any requirement to provide any information or any part of a document that contains matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.

No. 96 Page 90, schedule 4.2 [16], proposed section 357. Insert after line 21:

- (8) Nothing in this section requires a person to comply with any requirement to provide any information or any part of a document that contains matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.

No. 97 Page 92, schedule 4.2 [16], proposed section 360 (3), line 7. Insert "or that would require the person to divulge information that is otherwise privileged" after "offence".

These three amendments provide measures to tighten up the legal process. Amendment 62 inserts subsection (3) into new section 290 to make it clear that nothing in that section requires a party to comply with any requirement to provide information that would be privileged in legal proceedings on the grounds of legal professional privilege. As the bill stands, it could force the disclosure of information that would otherwise be protected by legal professional privilege. This amendment will protect the basic legal rights of all parties and counter the erosion of basic legal rights that the bill represents.

Amendments 96 and 97 will make it clear that the commission does not have the power to demand documented information to which legal professional privilege exists. This protects the basic rights of parties appearing before the commission in the same way as they are protected before other courts. Clearly we need consistency and protection. I commend the amendments to the Committee.

**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) [4.23 p.m.]: The amendment to insert an exemption from the information exchange requirements for documents subject to legal professional privilege is opposed. Information exchange greatly facilitates the settlement of disputes because parties are informed of each other's positions and are more inclined to settle matters. The bill as drafted does not allow legal professional privilege to be overridden, although it does require the parties to produce any material on which they propose to rely. To include this amendment would allow parties to take others by surprise in proceedings, adding to the adversarial nature of proceedings. This is counter-productive and hinders the effective settlement of disputes.

Amendment 96 is unnecessary. Similar orders and powers within the legislation do not allow access to privileged material. The amendment is opposed. Amendment No. 97 is also unnecessary. Similar orders and powers in other legislation do not override privilege. It is a fundamental principle of law that privilege can only be overruled by express words.

**Amendments negatived.**

**The Hon. IAN COHEN** [4.24 p.m.]: I move Greens amendment No. 63:

No. 63 Page 59, schedule 4.2 [16], proposed section 293. Insert after line 35:

- (3) In the event that a medical assessment is not provided within 25 working days, the Commission must determine the dispute.

This amendment will ensure that inappropriate and unfair delaying tactics are not used against injured workers. If a worker has suffered an injury and is off work and out of pocket, an excessive delay in the provision of compensation can be very damaging to that individual. A fair system demands that any potential for unfair and costly delaying tactics is removed. I commend the amendment to the Committee.

**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) [4.25 p.m.]: Medical issues ought to be resolved by medical practitioners. To impose a 25-day limit on assessments will mean that in some cases arbitrators will be making decisions without access to considered medical advice. On what basis has this 25-day time limit been set? This appears to be a backdoor method of undermining the medical assessment system. I am not accusing the Hon. Ian Cohen of being a backdoor sort of person but I am not sure who drafted his amendment. It is reminiscent of the current system and will result in inconsistent decision-making, and parties representing duelling medical evidence are provided with greater opportunity for unnecessary legalistic disputation. It has been shown to be one of the worst ways to resolve disputes about medical issues. The Government cannot support this amendment.

**Amendment negatived.**

**Ms LEE RHIANNON** [4.26 p.m.], by leave: I move Greens amendments Nos 64 and 68 in globo:

No. 64 Page 60, schedule 4.2 [16], proposed section 294 (2), lines 6 and 7. Omit all words on those lines. Insert instead:

- (2) A statement is to be attached to the certificate setting out the Commission's full reasons for the determination.

No. 68 Page 62, schedule 4.2 [16], proposed section 299. Insert after line 25:

- (4) The Registrar must give the worker concerned reasons for revoking the interim payment direction as soon as possible after the revocation.

Amendment No. 64 effectively replaces a requirement currently in the bill for a brief statement to be attached to the certificate setting out the commission's reasons for the determination with a requirement that the full reasons for that determination be attached. The basis for this amendment is to ensure that decisions are justified by the evidence presented to the court. The Greens are concerned that given the arbitrary and truncated nature of the claims proceedings in this bill, an injured worker could have a claim denied and then be provided with only the briefest explanation for the outcome. That is something we believe would be most unjust. If the process is going to be fair to all parties, it must be more transparent and more accountable. Claimants deserve a full and thorough explanation for the outcome of any case. This amendment will achieve just that.

Amendment No. 68 will ensure that workers are provided with reasons for the revocation of the interim payment order at the earliest possible date. This is designed to protect the worker from arbitrary treatment by the registrar and to act as a discipline on the decisions of the registrar. Again, it is something we believe is reasonable. It just provides information to the injured worker. Considering the situation these people find themselves in, having the satisfaction of understanding the reasons for the decision is most important. We commend the amendments to the Committee and hope the Government will support them.

**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) [4.28 p.m.]: The Government does not support Greens amendment No. 64. Again, it is a further complication to what is an attempt to simplify the dispute resolution process. The Government is of the view that the current provisions requiring the setting out of reasons is adequate. For similar reasons the Government cannot support Greens amendment No. 68.

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

**The Committee divided.**

**Ayes, 7**

Mr Breen  
Dr Chesterfield-Evans  
Mr Cohen  
Mr Oldfield

Ms Rhiannon  
*Tellers,*  
Mr R. S. L. Jones  
Dr Wong

**Noes, 23**

Mr Colless  
Mr Della Bosca  
Mr Dyer  
Ms Fazio  
Mrs Forsythe  
Mr Gallacher  
Miss Gardiner  
Mr Gay

Mr Harwin  
Mr M. I. Jones  
Mr Lynn  
Mr Macdonald  
Mrs Nile  
Reverend Nile  
Mr Pearce  
Dr Pezzutti

Ms Tebbutt  
Mr Ryan  
Ms Saffin  
Mr Tsang  
Mr West  
*Tellers,*  
Mr Moppett  
Mr Primrose

**Question resolved in the negative.**

**Amendments negatived.**

**Ms LEE RHIANNON** [4.37 p.m.], by leave: I move Greens amendments Nos 65 and 66 in globo:

No. 65 Page 60, schedule 4.2 [16], proposed section 295, line 18. Omit "weekly". Insert instead "the method, time or regularity of weekly".

No. 66 Page 60, schedule 4.2 [16], proposed section 295. Insert after line 22:

, or

(c) interim payment of weekly payments of compensation or medical expenses compensation.

These amendments broaden the definition of the class of disputes to which expedited assessment can be applied to include method, time and regularity of weekly payments for medical expenses, compensation and interim payment of weekly payments for medical expenses. The amendments will reduce arguments about how to resolve disputes about how insurers pay, whether they pay on time and the regularity of the payments, and will allow dispute resolution for interim payment of weekly payments for medical expenses. The Greens have moved the amendments to give surety that injured workers—we have said many times that they are the ones in the most vulnerable position—will get their payments and get them on time. We commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.38 p.m.]: The Government opposes the amendments. The intent of the amendments is unclear. They appear to be providing a means for dealing with disputes about late payments. The Claims Advisory Service already has powers to deal with such disputes, so any dispute about weekly benefits can be referred for expedited assessment.

**Amendments negatived.**

**The Hon. IAN COHEN** [4.39 p.m.]: I move Greens amendment No. 67:

No. 67 Page 61, schedule 4.2 [16], proposed section 297 (2), line 11. Omit "\$1,000".

Insert instead "\$5,000".

The amendment increases minimum interim payment for medical costs from \$1,000 to \$5,000 to cover valid medical expenses such as magnetic resonance imaging and other procedures that, if applied early, would expedite recovery. The amount of \$1,000 is too small. As I said earlier in relation to an amendment that the Government accepted, a figure of \$5,000 is more appropriate and realistic. Early intervention will be more effective in the rehabilitation of the worker, giving a win-win situation for employers and employees. The worker potentially could return to the workplace earlier, and with less expense. I commend Greens amendment No. 67 as reasonable and expect that the Government will see the light and accept it.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.39 p.m.]: Once again the Hon. Ian Cohen anticipates things. In this case I will put him out of his misery. The Government will accept this amendment.

**Amendment agreed to.**

**The Hon. PETER BREEN** [4.40 p.m.]: I move Reform the Legal System amendment No. 7:

No. 7 Pages 66-68, schedule 4.2 [16], proposed part 6 of Chapter 7, line 6 on page 66 to line 15 on page 68. Omit all words on those lines.

My amendment seeks to omit part 6 as it refers to work injury damages claims, and pre-empts the Sheahan inquiry. The bulk of the earlier amendments relating to common law have been omitted pending the Sheahan inquiry. However, part 6 is entitled "Special provisions for claims for work injury damages" and provides that assessment of liability and damages will be undertaken by the commission. The assessment will be binding on damages but not liability. The whole process is wasteful, and my amendment will delete part 6 from the bill on that account.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.40 p.m.]: My earlier comments about the provisions for assessment of common law claims on a voluntary basis are applicable to this amendment. The system of arbitration for common law claims is entirely voluntary. More importantly, the arbitration process in the bill will deliver benefits in terms of faster processing of claims. If injured workers want to use this system, they should be able to do so. Consequently, the amendment is opposed.

**Amendment negatived.**

**The CHAIRMAN:** Order! Greens amendment No. 69, which has been negatived, cannot be moved as it is the same as Reform the Legal System amendment No. 7.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [4.41 p.m.], by leave: I move Australian Democrats amendments Nos 14A and 14B in globo:

No. 14A Page 68, schedule 4.2 [16], proposed section 319, line 19. Insert "or psychologist" after "medical practitioner".

No. 14B Page 68, schedule 4.2 [16], proposed section 320, line 30. Insert "or psychologists registered under the *Psychologists Act 1989* or both" after "practitioners".

Basically, amendment 14A inserts "psychologists" in the bill in lieu of "medical practitioner", and amendment 14B provides that the practitioner must be a registered psychologist under the Psychologists Act. That will ensure that the psychologist is properly qualified. As honourable members know, post-traumatic stress claims resulting from armed hold-ups and so on, which are quite common, are usually managed by a GP and a treating psychologist. A psychiatrist is not usually involved as such. In terms of a specialist medical practitioner, such a person is not usually involved.

This is a genuine situation. I have dealt with a number of post-traumatic stress cases. The most notable case related to a hotel hold-up in south Burwood. Two young women were counting about \$30,000 in takings from poker machines. A gang crashed down the door, held up the two women at gunpoint and put a bullet in the ceiling above the head of one of them. The women were quite traumatised and had great difficulty working for a long time thereafter. Their personal relationships fell apart, and one of them returned to her home in Austria for some time. It was a genuine and serious illness. The psychologists in this case did an excellent job. It is extraordinary that psychologists have not been included in the bill. My amendments would simply include them for the cases that they manage in practice. I trust the Government has no problem with these amendments.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.43 p.m.]: The provisions relating to approved medical specialists have been developed as a result of consultations with the Labor Council and others. To ensure that injured workers and employers have faith in the decisions of approved medical specialists, it is critical that they be leading practising medical specialists in their field. It is essential that approved medical specialists be medical practitioners. While psychologists are highly qualified in their field, they do not have medical training but are in fact related health care professionals. They do not have the necessary medical training to make medical assessments of impairment. Therefore, the amendments are opposed.

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

**The Committee divided.**

**Ayes, 5**

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

**Noes, 25**

Mr Breen	Mr Harwin	Ms Saffin
Ms Burnswoods	Mr Johnson	Mr Tingle
Mr Colless	Mr M. I. Jones	Mr Tsang
Mr Della Bosca	Mr Lynn	Mr West
Mr Dyer	Mr Macdonald	Dr Wong
Ms Fazio	Mrs Nile	
Mrs Forsythe	Mr Pearce	<i>Tellers,</i>
Miss Gardiner	Dr Pezzutti	Mr Moppett
Mr Gay	Mr Ryan	Mr Primrose

**Question resolved in the negative.****Amendments negatived.**

**The Hon. IAN COHEN** [4.53 p.m.], by leave: I move Greens amendments Nos 70, 76, 77 and 78 in globo:

No. 70 Page 68, schedule 4.2 [16], proposed section 319, line 24. Omit ", the aetiology of the condition,".

No. 76 Page 72, schedule 4.2 [16], proposed section 326 (1) (a), lines 14 and 15. Omit "as a result of an injury".

No. 77 Page 72, schedule 4.2 [16], proposed section 326 (1) (b), lines 16-18. Omit all words on those lines.

No. 78 Page 72, schedule 4.2 [16], proposed section 326 (1) (d), line 21. Omit all words on that line.

New section 326 refers to medical assessors making decisions which are matters of law for which they are not qualified. Part of the philosophy behind the bill is to remove the legal rights of injured workers, wherever possible, to reduce the costs of the scheme. It is appalling that the supposed financial problems of the scheme are to be resolved by allowing injured workers to suffer. The definition of "dispute" in new section 319 refers to the aetiology—that is, the origins of the condition. This, again, suggests that the medical assessor can judge whether an injury is caused by work. It is partly a legal issue. Questions of law and medicine can depend on credibility and are likely to be highly contested between doctors.

It would be difficult to issue guidelines dealing with subjective matters such as these. The use of aetiology is likely to cause aggravation and exacerbation. Greens amendments Nos 70, 76, 77 and 78 redress this situation by removing from the medical assessment all issues of law, such as whether the degree of permanent impairment was a result of the injury or otherwise, and the contributions of previous injuries and pre-existing conditions. This will ensure that legal questions that are of crucial importance to the future of an injured worker are resolved by people who are competent to deal with them and reserves medical assessors for matters of a medical nature. This would restore at least some of the basic rights of injured workers. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.55 p.m.]: Greens amendment No. 70 would prevent an arbitrator or registrar from referring a dispute relating to the cause of the worker's condition to an approved medical specialist. Those matters will be left to the arbitrator to determine without access to independent impartial advice. It is a key element of the Government's reforms that medical disputes be considered and resolved by medical practitioners. Greens amendments Nos 76, 77 and 78 are opposed. The question of whether a worker's condition is partly caused by a pre-existing condition or because of permanent impairment is a medical matter. If binding medical assessments are to be made on permanent impairment, it is essential that these matters be determined by the commission.

**Amendments negatived.**



**Ms LEE RHIANNON** [4.56 p.m.], by leave: I move Greens amendments Nos 71, 72, 73 and 75:

- No. 71 Page 68, schedule 4.2 [16], proposed section 320, lines 28 and 29. Omit ", in accordance with criteria developed by the Minister in consultation with the Council,". Insert instead ", with the approval of the Council,".
- No. 72 Page 70, schedule 4.2 [16], proposed section 322 (4), lines 4 and 5. Omit "Proceedings before the Commission may be adjourned until the assessment is made".
- No. 73 Page 70, schedule 4.2 [16], proposed section 323 (3), line 26. Omit "approved medical specialist". Insert instead "Commission".
- No. 75 Page 72, schedule 4.2 [16], proposed section 325. Insert after line 3:
- , and
- (e) set out details of the patient's history of the injury, and
  - (f) certify as to the findings on examination, and
  - (g) certify as to the results of any investigation, and
  - (h) sets out the diagnosis in relation to any specific questions in issue.

New section 320 allows the president to appoint an approved medical specialist using guidelines developed by the Minister in consultation with the advisory council. This arrangement does not give sufficient opportunity for a range of stakeholders in the scheme to be involved in the appointment of specialists who will play a crucial role in the assessment of impairment. Further, it compromises the independence of the commission from government by giving the Minister inappropriate power over the criteria. The Greens amendment would give the power of appointment to the president of the commission with the approval of the advisory council. As we know, this represents all stakeholders and embodies a wide range of experience and interest. Clearly it would be a most advisable way to go.

The Greens amendment will produce a more independent and fair assessment. The amendment reflects the current situation. Greens amendment No. 72, relating to new section 322 (4), gives WorkCover the ability to frustrate the final settlement of claims. This provision would allow proceedings before the commission to be adjourned until the approved medical specialist is satisfied that the injury has stabilised. Such powers could be used to adjourn the final settlement, even though, for example, both the insurer's and claimant's doctors agree that the injury is permanent. In order to avoid medical assessors being used to delay the final claim, this amendment deletes the ability to adjourn the proceedings against a failure to determine that the injury has stabilised. The amendment surely fits into the Government's mantra of fairer, faster, simpler. Obviously it is a tidying-up mechanism and provides some safeguards.

Greens amendment No. 73 refers to new section 323, which creates a number of unfair aspects in the determination of deductions for previous injuries or pre-existing conditions or abnormalities, including the use of approved medical specialists to accept or determine which medical evidence is to be accepted for the purposes of determining the extent of deduction. The Greens amendment would give that power to the commission. Because this is a mixed question of fact and law, clearly it should be dealt with by the commission and not by a doctor. To do otherwise is to give a doctor, with no legal qualifications, the power to determine a matter of law. Without the Greens amendment, this new section would be yet another attack on the rights of injured workers.

Amendment No. 75 relates to new section 326, which provides for only limited information in the medical assessment certificate. This amendment would broaden the information to include patient history of the injury, findings on examination, results of investigation and diagnosis, as well as the answer to specific questions posed. The amendment will ensure that an approved medical specialist will provide a detailed report on which he or she has made the decision so that there is more accountability and transparency attached to the decision. This would also allow a worker to better determine the merits of a possible appeal. I commend the Greens amendment to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.00 p.m.]: In relation to Greens amendment No. 71, the Workers Compensation and Occupational Health and Safety Council is established as a consultative body. This amendment is inconsistent with the functions and purposes of the council. Further, it is difficult to imagine how a consultative body, which has more than 15 members, could become involved in the appointment process. There is potential to open up the prospect of administrative law challenges to the process. I point out to the Committee that Greens amendment No. 72 is strongly opposed by the Government. It is not in

the interests of workers. The power to adjourn until an impairment has stabilised is necessary. Without it, an assessment maybe incorrect: It may not show the true extent of the worker's condition. As a result, the worker would have to file a new claim if the condition deteriorated. Alternatively, it will encourage claimants to lodge a claim, despite the fact that they may partially recover. This could result in overcompensation.

Greens amendment No. 73 is similarly opposed by the Government. The question of whether the worker's condition is partially caused by a pre-existing condition is a medical matter. If permanent impairment assessments are to remain binding, it is essential that the discretion to accept or reject medical evidence in relation to pre-existing conditions remain with the approved medical specialist. Greens amendment No. 75 is, in the Government's view, unnecessary. The requirements set out in draft section 325 in relation to medical assessment certificates are considered adequate. The additional matters listed in the amendment are already covered by the other requirements of the section.

#### **Amendments negatived.**

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [5.02 p.m.]: I move Opposition amendment No. 9:

No. 9 Page 69, schedule 4.2 [16], proposed section 320. Insert after line 8:

- (5) The criteria referred to in subsection (1) are to be laid before each House of Parliament by the Minister or by the Clerk of that House.
- (6) The President may not act in accordance with the criteria (as required by subsection (1)) unless each House of Parliament passes a resolution approving the criteria.

This amendment deals specifically with the appointment of approved medical specialists in conjunction with the creation of a medical assessment program proposed by the Government in this legislation. The two additions to section 320 that the Opposition proposes are that the selection criteria to determine medical specialists are to be laid before each House of the Parliament by the Minister so that it can be tabled by the Minister or by the Clerk of the House, and the president may not act in accordance with the criteria as required by subsection (1) unless each House of Parliament passes a resolution approving the criteria. For the information of all honourable members, I point out that this is to ensure that the criteria upon which the determination is being made for approved medical specialists—which is a crucial part of the legislation before us—is one that has been the subject of some consideration and debate by the Parliament and which is consistent with the position that the Opposition has taken in this debate, namely, to ensure that Parliament has an ongoing role to monitor the implementation of the scheme in key areas that are deficient at this stage. In this case, it is the criteria upon which medical specialists will be approved.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.04 p.m.]: The Leader of the Opposition's amendment requires criteria that will be developed by the Minister for the appointment of approved medical specialists to be tabled in Parliament. This is not appropriate. The guidelines will already be subject to sufficient scrutiny because of the provision in the bill which requires them to be developed in consultation with the advisory council. Effectively, the amendment would delay implementation of the new commission. The president will not be able to employ medical specialists as needed and as required.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [5.04 p.m.]: I pose a question to the Parliamentary Secretary, who has just informed the Committee that the process will be delayed. Is it not the case that no medical specialist can be appointed until the guidelines are in place? This is an extremely important point. Medical specialists cannot be appointed until the guidelines are in place, and the guidelines are disallowed. The Coalition's amendment requires that the criteria upon which medical specialists are to be selected—not criteria for who is selected—or by which the positions will be determined is such that members of Parliament will be able to have an opportunity to look at the issue and, having done so, may resolve to accept the criteria. It should be recognised that the Parliamentary Secretary has indicated that nothing can occur as far as the utilisation of medical specialists is concerned until the guidelines are developed and brought back to the Parliament at a later stage as a regulatory instrument. That may allow for either dissolution or ratification by the Parliament, or it may at least provide an opportunity for the Parliament to give some consideration to the criteria.

This extremely important factor has been clouded over during the last couple of hours. This new system cannot commence if there is any opportunity for the Parliament to have some resolution of certain aspects such as the criteria, the guidelines or the rules of the commission. A number of honourable members have been told

that the process preferred by the Coalition, which would actually ensure that this Parliament looks at what is to be put in place, gives the Parliament a chance to express its approval by resolution. A few moments ago the Government indicated that nothing can commence until the guidelines, which may be disallowed, are put in place, but that may be some months ahead. That was indicated during the estimates committee hearing in recent weeks when the Minister said that it would be some months before any clarification could be given so far as guidelines are concerned. There is ample opportunity for the selection criteria to be brought back to the Parliament for the Parliament to pass a resolution in relation to them; equally, there will be ample opportunity for the guidelines and rules of the commission to be dealt with in the same way.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.09 p.m.]: When one reads Liberal Party amendment No. 9, it is readily apparent how difficult and frustrating the provision will be. Subsection (6) states:

... the President may not act in accordance with the criteria ...

They are criteria that have been established with the advisory council, which consists of all the stakeholders involved in WorkCover. Those criteria have been worked out with the advisory council, but subsection (6) states that the president may not act in accordance with the criteria unless each House of Parliament passes a resolution approving the criteria. This is just phenomenal. I know that some honourable members would bring before this Parliament just about everything that is done by people as ordinary daily human activity, but to bring the criteria before the Parliament absolutely overburdens the Parliament with this issue.

We have established a committee that will be headed by Reverend the Hon. Fred Nile, who will have open access to every issue pertaining to WorkCover. Surely that is enough, without having to bring the criteria into the Parliament, to be passed by both Chambers. In terms of the government of this State, I cannot think of any instance in which this is a requirement. Ultimately, it is not the place of this Parliament to approve the criteria for the appointment of doctors. That is quite extraordinary and unprecedented, and it should be rejected.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [5.10 p.m.]: That was fiery and interesting rhetoric from the so-called leader of the left in this Chamber. The Government is bringing in guidelines, and it is only fair to also bring in the criteria. This is not something that will be changed on a daily basis—or perhaps that is what the Parliamentary Secretary is trying to say: that the criteria will be changed on a day basis and that is why the Government does not want scrutiny. He has the look of disdain, which indicates that it will not change on a daily basis. That backs up the fact that the criteria will be set.

**The Hon. Ian Macdonald**: A selection of doctors.

**The Hon. DUNCAN GAY**: Exactly, proper criteria in place that will be recommended and open for scrutiny. It is no more than that. It is not a great conspiracy theory. The Opposition is not out to remove your farm. We are just trying to put in place something that is sensible and open.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.11 p.m.]: This is the nub of the matter and, in a sense, the nub of the bill. If I am correct and we cannot get guidelines along the lines that allow for an equitable and fair way of deciding someone's degree of disabilities, of course the guidelines will be close to those of the American Medical Association, and no good. The reaction of the Hon. Ian Macdonald has shown that he does not want this delayed because it has to come through the Parliament and it will be at some risk. However, if it is a regulation, it will run for a couple of months and if we disallow it we may foul up all the current cases.

**The Hon. Ian Macdonald**: No, not disallowance. Get it right.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS**: No. I am saying that if this amendment fails, it then becomes a regulation, which then has to be disallowed. However, should the Chamber disallow it, the story will be that there are 500 people working on it and there are 3,000 claims in the pipeline and the whole system will be wrecked. That is the first possibility if the Committee rejects the amendment. If it passes the amendment, the thing will not start because it will have to come through the Parliament and the guidelines will be seen. The problems, which are inevitable, will then be discussed. I am not saying that they will not pass but they will be discussed. As to whether the doctors are approved, there is a qualification called the American College of Disability Evaluating Physicians, who, according to the American system, are trained in the American Medical Association guidelines.

The tradition in Australia is that most of the people doing these evaluations are orthopaedic surgeons and, of course, they are not so fussy on the guidelines but get percentages of impairments using their clinical

experience. These two groups will have to decide which is which. Presumably, if they are Australian guidelines, the fact that very few people have a qualification from America will not be such a problem. If these guidelines are approved by Parliament, that will expose problems and cause delay. However, if the Government is asking that the regulation not be passed, it is effectively saying that when it comes in as a theoretically disallowable regulation, it will not be disallowed in practice. The Government has created a shell bill. If this amendment is voted down, the system will actually go through virtually unchecked and certainly without control by the Parliament.

**Ms LEE RHIANNON** [5.14 p.m.]: The Greens support the amendment. We have heard the guffaw from the Hon. Ian Macdonald. It would be interesting to hear him put his response in words.

**The Hon. Ian Macdonald:** I thought I had done so.

**Ms LEE RHIANNON:** You need to do it better. The alarm bells should ring when honourable members look at the second line, which has the word "consultation". Time and again in this debate we have found that consultation means that the Government might talk to us if we are lucky but it will not take any notice of anything we say. We will not have dialogue. Consultation has been one of the big con jobs in this exercise. That has been to the detriment of the Government, and it is why the Government has had such extraordinary problems in bringing forward this bill.

Clearly, the criteria should be in the bill. The fact that the Hon. Ian Macdonald did one of his passionate raves shows how much it means. He is a dead giveaway. When he does one of his passionate, long raves, we know the Government is worried. It cannot give this one away. When he gives a nice talk we know it does not worry the Government too much. He is a bit of a giveaway. I urge honourable members to study this carefully. The Greens believe that the amendment is important. We agree with the analysis of the Hon. Dr Arthur Chesterfield-Evans, who said that in many aspects it goes to the nub of the legislation. The response from the Government shows that it wants to ensure that the important detail is not in the bill so that the Government can control it at every point.

**Reverend the Hon. FRED NILE** [5.16 p.m.]: In arguing the amendment the Opposition has linked it back to the guidelines. If the amendment is defeated, it means that the WorkCover Authority and the Minister, in consultation with the council, can go ahead and appoint medical practitioners to be approved medical specialists for the purposes of this part. I do not know whether the guidelines need to be defined to the last detail before all of that procedure starts. At this stage, this will stop it. What is wrong with having a procedure where medical practitioners can be appointed? Then, in due course, all those approved people will be trained on the new guidelines. They want to put it back-to-front.

**The Hon. Dr Arthur Chesterfield-Evans:** How can someone be trained on the guidelines if they do not exist?

**Reverend the Hon. FRED NILE:** You go through the procedure to select the medical practitioners. You do not need the guidelines to do that. The Opposition argued eloquently how much trust it has in the advisory council, yet new section 321 states, "The Minister in consultation with the council". So it is done with the council. The Opposition has bets both ways.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [5.18 p.m.]: I will ask the question of the Minister: Will all medical specialists be appointed prior to the guidelines being finalised?

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.18 p.m.]: I will seek advice on the methodology. I am not sure, though, that it is germane to the debate.

**The Hon. Michael Gallacher:** Yes or no?

**The Hon. JOHN DELLA BOSCA:** It does not matter.

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

**The Committee divided.**

**Ayes, 12**

Dr Chesterfield-Evans	Mr Gay	
Mr Cohen	Mr Lynn	
Mrs Forsythe	Mr Pearce	<i>Tellers,</i>
Mr Gallacher	Dr Pezzutti	Mr Moppett
Miss Gardiner	Ms Rhiannon	Mr Ryan

**Noes, 19**

Mr Breen	Mr R. S. L. Jones	Mr Tingle
Dr Burgmann	Mr Macdonald	Mr Tsang
Ms Burnswoods	Mrs Nile	Dr Wong
Mr Della Bosca	Reverend Nile	
Ms Fazio	Mr Oldfield	<i>Tellers,</i>
Mr Johnson	Ms Saffin	Mr Primrose
Mr M. I. Jones	Ms Tebbutt	Mr West

**Pairs**

Mr Colless	Mr Dyer
Mr Jobling	Mr Egan
Mr Harwin	Mr Hatzistergos
Mr Samios	Mr Obeid

**Question resolved in the negative.**

**Amendment negatived.**

**Ms LEE RHIANNON** [5.28 p.m.]: I will not move Greens amendment No. 74.

**The Hon. IAN COHEN** [5.28 p.m.], by leave: I move Greens amendments Nos 79, 80, 81, 84, 86, 87 and 88 in globo:

No. 79 Page 73, schedule 4.2 [16], proposed section 327 (4), lines 12-15. Omit all words on those lines.

No. 80 Page 74, schedule 4.2 [16], proposed section 330 (1), lines 30-36. Omit all words on those lines. Insert instead:

(1) All reasonable costs of medical assessments under this Part are payable by the employer or insurer.

No. 81 Page 75, schedule 4.2 [16], proposed section 331, lines 26 and 27. Omit "WorkCover Guidelines". Insert instead "Rules of the Commission".

No. 84 Page 78, schedule 4.2 [16], proposed section 338, lines 15-20. Omit all words on those lines.

No. 86 Pages 82 and 83, schedule 4.2 [16], proposed section 345, line 24 on page 82 to line 13 on page 83. Omit all words on those lines.

No. 87 Page 84, schedule 4.2 [16], proposed section 349, line 20. Omit "Registrar". Insert instead "President".

No. 88 Page 85, schedule 4.2 [16], proposed section 351 (3), lines 10-12. Omit all words on those lines.

Amendment No. 79 deletes new section 327 (4), which creates a barrier to appeals against medical assessment by having the matter prejudged by a registrar. Without this amendment the bill would deny natural justice for an injured worker by creating an unnecessary barrier to appeal against a medical assessment. This is an important step in addressing the unfair and cost-driven nature of the bill. With regard to amendment No. 80, new section 330 (1) allows for the costs of medical assessments to be payable by the employer or insurer except where provided by the regulations. Further, it allows WorkCover to impose uncontested fees and charges for medical assessments. The amendment removes both the regulatory power to provide for the costs of medical assessment to be payable by a party other than the employer or insurer, and the power of WorkCover to impose fees and charges beyond the costs of providing such assessments.

These changes provide a basic level of protection for workers against being forced to pay the cost of a medical assessment. It is unreasonable to order an injured worker to undertake a medical assessment and then to

expect that worker to meet the cost of the assessment. New section 331 seeks to place within the guidelines the rules of appeal and matters of referral for medical assessment by the commission. Amendment No. 81 would bring these matters within the rules of the court. Rules of appeals and procedures are normally specified by the relevant tribunals, such as is the case with the Industrial Relations Commission. This would give the commission greater independence.

New section 338 creates a regulatory power that would stop legal practitioners from recovering the cost of obtaining a medical certificate or other report. Amendment No. 84 would delete that section. Practitioners can only recover reasonable costs at the discretion of the commission. This provision could be used to limit the right of workers to obtain a further medical report, and thus limit the possibility of the best evidence being available to the commission. New section 342 ensures that costs that are obtained unreasonably will not be recoverable. Thus the new section that this amendment seeks to delete is unnecessarily punitive. As to amendment No. 86, this bill already creates barriers to appeals—

**The CHAIRMAN:** Order! Amendments Nos 86, 87 and 88 conflict with other amendments moved previously by other members and cannot be dealt with at this time.

**The Hon. IAN COHEN:** In that case, I restrict my remarks to amendments Nos 79, 80, 81 and 84.

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.32 p.m.]: The Government does not support Greens amendments Nos 79, 80, 81 and 84. The forum for the medical impairment guidelines that are being developed by working parties of medical specialists, including those nominated by the Labor Council consulting process, is the right place for the rules relating to medical assessments to be developed. Medical issues should not be determined here. The bill provides for the medical impairment guidelines to be subject to disallowance, which will ensure that they are subject to appropriate parliamentary scrutiny. The provision proposed to be deleted by Greens amendment No. 79 is essential in order to ensure that medical appeal panels are not constituted unnecessarily. It is entirely appropriate that the registrar have the power to decline to refer an appeal if one of the grounds of appeal set out in new section 327 (3) is not made out. The amendment would result in unnecessary waste and disputation.

Amendment No. 80 would remove the power of the authority to impose fees in order to recover the costs of medical assessment. These fees would be paid by the insurer. One consequence of this amendment would be that the authority could not charge fees to recover costs. The amendment would also remove the power for exemptions from the general principle that costs and medical assessment are payable by the insurer. There are clearly some instances when it is not appropriate for the insurer to pay costs—for example, when a worker fails to attend for an assessment. We oppose this amendment as it would result in wastage and go far beyond the current practice accepted in the workers compensation jurisdiction. As to amendment No. 81, the guidelines are the most appropriate place to determine the rules relating to medical assessment. These are almost exclusively medical issues; they are not procedural issues or matters of judicial discretion. These matters will be subject to sufficient parliamentary scrutiny when the guidelines are presented as disallowable instruments, as envisaged in the legislation.

#### **Amendments negatived.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.35 p.m.]: I move my amendment No. 15:

No. 15 Page 76, schedule 4.2 [16]. Insert before line 1:

#### **332 Medical practitioner to contact employer**

- (1) An injured worker's treating medical practitioner is, if the worker consents, to use his or her best endeavours to contact the worker's employer as soon as practicable after the initial consultation with the worker to discuss the severity and likely outcomes of the injury and options for the worker's return to work.
- (2) Medical practitioners are encouraged to maintain this contact with the employer.

The essence of this amendment is that it will compel a medical practitioner who sees an injured worker for the first time to contact—generally by telephone—the worker's employer as soon as practicable after the initial consultation in order to discuss the severity and likely outcomes of the injury as well as options for the worker's return to work. The object of the amendment is to establish a co-operative framework between the doctor, the employer and the employee, because they are the parties who must resolve the situation.

Much of the resentment levelled at workers who take time off work stems from the fact that employers have no communication with doctors except via certificates that say "He can't work," "He can't work," "He can't work." This frustrates employers because they do not know when their employees will return to work and, as a consequence, they cannot plan ahead. A worker may return to work as soon as a certificate expires, or he may be off work for months. This causes many difficulties.

If a medical practitioner contacts an employer and explains that an employee will be off work for a specified period, which will be reduced if the employer makes arrangements to phase that employee back into work, and then asks the employer to make the appropriate arrangements, the employer feels he is in the loop, and this makes for a much better relationship between the employer and the doctor—and, more importantly, between the employer and the employee.

This is a harmless amendment in that it has no penalty. It is simply a recommendation. If the amendment is passed, the proposal will be accepted quickly by general practitioners because they will realise that this legislation has implications for them and will make a difference to the way in which they practise. They will realise that they can be involved in managing the process and fixing it from the bottom up—which is how it should be done. I believe that the amendment will provide real assistance.

This amendment is a litmus test of the Government's willingness to co-operate with Parliament. It is a perfectly sensible amendment with no downside, and it will help the system work effectively. Will the Government accept it? What is the Opposition's position on this amendment? It will cost nothing but it will help to fix the system from the bottom up. Is it acceptable, or will no amendment—no matter how good—ever be supported in this Chamber if it is not moved by one of the major parties? I urge honourable members to support the amendment.

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.38 p.m.]: I would like to make the Hon. Dr Arthur Chesterfield-Evans a happy man, but I cannot support the amendment. I do not act out of spite because the honourable member is not from one of the major parties. In fact, I have accepted past amendments moved by the Hon. Dr Arthur Chesterfield-Evans, the Greens and many other crossbenchers. So I think the honourable member's observation that the Government never accepts amendments from the minor parties and independents is unfair.

We oppose this amendment for practical reasons. WorkCover is embarking upon a significant administrative endeavour to overcome the sorts of problems referred to by the Hon. Dr Arthur Chesterfield-Evans. It is probably preferable to change the way in which the practice occurs rather than to seek to legislate where no cultural practice exists. WorkCover will shortly be embarking on a detailed education program to assist general practitioners with procedures and communication under the workers compensation system. The concerns that appear to underlie the Hon. Dr Arthur Chesterfield-Evans' amendment will be taken into account in that process, and explored more effectively and in greater detail than would occur under his amendment.

The matter of doctor-patient confidentiality is relevant to communications with an employer, and that will also be addressed in the context of WorkCover's education program. Accordingly, at this stage, though my heart says the Hon. Dr Arthur Chesterfield-Evans is trying very hard, my head does not allow me to accept his amendment. A specific legislative requirement for doctors to contact the worker's employer is not only inappropriate but it may create many concomitant problems not envisaged by the honourable member in moving his amendment. The Government is interested to hear more detail about the views of the medical profession on such a legislative requirement, were it eventually to appear in legislation.

**The Hon. Dr BRIAN PEZZUTTI** [5.40 p.m.]: I do not support the amendment moved by the Hon. Dr Arthur Chesterfield-Evans, which raises the issues of computer e-contact to speed up security and certainty, and the ability to maintain files without having to have bits of paper flying everywhere. The Hon. Dr Arthur Chesterfield-Evans referred to "contact". I ask the Minister to include in his communications with the profession and employers discussions about the use of the web, particularly since most medical practices use it. What standard safety measures will he provide? The use of the web will make it more efficient for people to check on patients, and it will ensure that the system is more secure and filing is a lot easier.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.41 p.m.]: I gather the Opposition does not support my amendment?

**The Hon. PATRICIA FORSYTHE** [5.41 p.m.]: That is what I said.

**Amendment negatived.**

**The Hon. PETER BREEN** [5.42 p.m.]: I move Reform the Legal System amendment No. 8:

No. 8 Page 77, schedule 4.2 [16], proposed section 337. Insert after line 31:

- (2) Before recommending the making of regulations under subsection (1) fixing maximum costs for legal services, the Minister is required to consult and take into account the views of the Bar Association and the Law Society with respect to the proposed maximum costs for legal services.

This amendment relates to the maximum costs for legal services and regulations fixing costs. My amendment would require consultation with the Law Society and the Bar Association. I have moved this amendment because the power to restrict representation by fee-fixing arrangements under regulations deprives the parties of any effective representation in cases that have not been resolved informally.

Insurers can be expected to engage full-time professional lawyer advocates because of the volume of work, whereas workers will be seeking the assistance of their own lawyers on an occasional or ad hoc basis. Further, even non-legally qualified representatives from insurance companies are necessarily better equipped to deal with the issues arising in a workers compensation dispute than are workers who have little or no experience in this process. The fact is that it costs money to prepare cases.

By arbitrarily fixing maximum costs, cases will be inadequately prepared and the evidence necessary to deal with an issue may never be adduced. Some cases are also more complicated than others. I would argue that flexibility is essential, particularly when the arbitrator is inexperienced or is not required to be legally qualified, which is yet to be determined, or is not familiar with how legal costs can accrue. We all know from bitter experience that when a case gets more complicated than is expected, and when it becomes necessary to call witnesses and so on, costs can easily get out of hand.

My suggestion is that before fixing the maximum fees, consultation should take place with the Law Society and the Bar Association, who, after all, are expert in this area and know what their members charge to conduct these kinds of cases. This is not without precedent. The Legal Aid Commission Act, for example, requires reference to the Bar Association in setting maximum costs, and that system works very well. I urge honourable members to support the amendment on the basis that workers are entitled to proper representation but unless the fees are set sensibly workers will not get that representation. I commend the amendment to the Committee.

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.45 p.m.]: This amendment relates to the power to make regulations to fix the level of legal costs. In considering proposals for any such regulations, consultation pursuant to general regulation-making procedures will occur with the Law Society and the Bar Association.

Consultation is already a requirement under the Subordinate Legislation Act. By inserting a specific prerequisite for consultation with those bodies, the proposed amendment would make the regulations vulnerable to administrative law challenges on technical points. Extra weight would need to be given to the views of the two service providers as a result of the amendment, at the expense of the views of the scheme stakeholders. Why should the legal profession be put in such a privileged position? The amendment is opposed.

**Amendment negated.**

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [5.45 p.m.]: I move Opposition amendment No. 10:

No. 10 Page 77, schedule 4.2 [16], proposed section 337. Insert after line 31:

- (2) The maximum costs fixed for agent services in or in connection with a particular workers compensation matter or work injury damages matter may not exceed two-thirds of the maximum costs fixed for legal services in or in connection with that matter.

This amendment follows on from the earlier point made by the Opposition about claims assistance. The Opposition is concerned that this could be yet another cost driver on the scheme. There needs to be some measure by which it can be determined. Apart from the Opposition's concerns that this presents the opportunity to allow fees to be set, the Opposition is particularly interested to recognise that the Minister is not drawing a distinction between legal practitioners and agents.



Honourable members would be aware that representatives or agents are, in the main, union representatives. The Opposition does not oppose union representatives being agents, but a distinction has to be drawn between a legally qualified legal practitioner and a union representative. For that reason the Opposition believes that legal practitioners have different qualifications, experience and knowledge, and a higher level of understanding than someone who would qualify as an agent, and therefore a distinction should be observed in setting maximum lawyer and agent costs. Maximum costs fixed for agents should be two-thirds of the maximum costs fixed for legal practitioners. This is a reasonable amendment and I hope that the Government will support it.

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.47 p.m.]: This is an entirely inappropriate amendment. There is no justification for legislating for a lower fee on the basis that work of a similar nature, where it is appropriate and possible for someone to perform it without specific professional qualifications, is not of equal value. There are some types of work that require specialist legal advice. That type of work will be compensated as legal fees through the appropriate regulations. The Opposition's amendment is arbitrary and unfair, and it discriminates against persons undertaking similar or the same work.

**The Hon. Michael Gallacher:** It is reverse discrimination against legally qualified practitioners!

**The Hon. JOHN DELLA BOSCA:** No, it is not. If agents have the requisite skill and conduct a case appropriately, a reduced fee would discriminate against them and those seeking representation by them. As I have said throughout this debate, when legal skills are required the appropriate remuneration will be given according to a schedule of legal fees. Obviously, that will be able to be collected exclusively by members of the legal profession. This amendment relates to undertakings that agents are able to perform only if they are competent in all respects.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [5.49 p.m.]: It is important to place on record that agents will be representing unions whose members pay significant fees. As well, under this regulation additional opportunities will enable agents, and consequently the union, to claim a significant fee for the setting of a maximum lawyer and agent cost: it allows the unions a second bite at the cherry. The Minister is saying, in effect, that a lawyer may as well not have the skills and expertise because a unionist is just as good in setting maximum fees. This provision does not make any distinction between a person who attains a high level of skill after being involved in the law for several years and a person who does not have a high level of skill. The Minister is basically bringing lawyers down instead of allowing them an opportunity to have their skills recognised.

**The Hon. GREG PEARCE** [5.50 p.m.]: Again, the problem is that we simply do not know what is intended to apply to agents. The Act is silent on the qualifications, competence, quality of work and behaviour of agents. I have heard that agents in the Industrial Court have been known to charge quite excessive fees. No disciplinary arrangements or safeguards are in place for workers or employers to use these agents. The Government has been happy to knock lawyers and, of course, that resonates throughout the community. But it is time someone said that to date, as a general rule, lawyers have made a positive contribution towards making the system work. We are being asked at the moment to accept on faith that this will be a better system and that this reform will deliver the savings the Premier and the Minister have insisted should be there. To achieve that, we are being asked to give up centuries-old protection for people having their day in court.

Two days ago a couple of injured workers from Newcastle came to see me. They told me that the most impressive part of the exercise they went through when they were injured was that they were able to have their day in court. They knew that at the end of the day their claims had been judged by judges who were independent of the Government. Here we are being asked to take on faith that this process will be fair. We will not have the independence of people making decisions bound by judicial oath. The commissioners and assessors will be appointed by, and can therefore be seen to be beholden to, the Government: they can be dismissed if they do not deliver for the Government. We all know that there will be problems with the conduct of hearings when evidence is not given in open court and under oath.

My major complaint about the agency issue is that again we are left to see what the Minister does, again the Minister has the power to make the rules of the commission, and again we run into a scrutiny issue. Lawyers are being singled out in a way that agents are not. I appreciate that we are not talking about new section 344, but the Minister might take on board that that new section allows the commission to make orders against

legal practitioners and not against agents, whereas under industrial legislation agents are bound by the same provisions. We are being asked again to take the Government at face value. This amendment introduces a level of accountability into the legislation.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.55 p.m.]: I appreciate that expertise should be rewarded; that is a sound principle of awards. It is reasonable that someone with legal training should be paid more than someone who does work not in a legal or quasi legal role. If the object of this amendment is to have salaried lawyers doing work for a commission or quasi judicial body—and they may not be particularly high salaries—there should be a differential between those with qualifications and those without. Perhaps if the rate were changed to 80 per cent or 85 per cent it might be more realistic, as the differential would be small. This amendment correctly recognises the expertise embodied in a law degree—why study three to four years at university in order to make the same amount of money as someone who did not study?—but two-thirds of the income is perhaps a little harsh as it may not be a survivable level of income for agents. Perhaps the Opposition might accept an amendment to increase the level to 80 per cent?

**The Hon. Patricia Forsythe**: Are you saying that two-thirds of a lawyer's income is not a livable income?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS**: It may not be, as it depends on the level of income on which it is calculated.

**The Hon. Michael Gallacher**: We will stick to the two-thirds, otherwise someone would then say, "What about 75 per cent? What about 75.5 per cent?"

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS**: The two-thirds figure has been plucked from the air; I am merely reflecting that two-thirds into Sydney markets and rents. If you are trying to eliminate agents as an entity and starve out the concept, you should say so. I am trying to obtain a level that acknowledges the differential but does not starve them out.

**The Hon. Michael Gallacher**: You cannot starve them out when you don't know what the maximum fees are going to be. The Government should be telling us the maximum fee and then we will be in a better position to determine whether to starve them out.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS**: We have scales of lawyers fees which, in some way, will be a benchmark for the types of awards that people working in this commission will receive. I am not familiar with those because it is not my profession, but presumably those figures will not be extraordinary; they will be within the ballpark of a market. Generally, two-thirds of a ballpark market figure may not be a livable income. If you are trying to eliminate agents, you should say so. If you are trying to give a reward for having a degree, that is fair enough and as a professional I support that. But why not make it 80 per cent, which at least will allow the agents to survive?

**Reverend the Hon. FRED NILE** [5.59 p.m.]: I seek to clarify two points that have occurred to me. The first is that the bill does not specify the qualifications of an agent. I assume, for example, an agent may be representing an employer organisation or a union. There are people with university qualifications working for unions. In other words, the agent will not necessarily be the shop steward, but may be a qualified person within the union. It could be that a person with a law degree on the staff of or employed by the union is the union's agent. The Opposition was making out that it would be an uneducated person versus a highly educated lawyer. The agent could be an educated person.

The Hon. Dr Arthur Chesterfield-Evans made a point about the current level of lawyers' charges. I thought one of the purposes of the bill was to get away from those current charges. We are considering a bill that has a simple dispute resolution procedure, so that lawyers will not have to spend as much time under the new system as they were spending under the old system. The whole purpose of this legislation is to simplify and speed up the dispute resolution procedure. Hopefully, we are not talking about highly paid lawyers handling a simple dispute resolution procedure.

**Amendment negatived.**

**The Hon. Dr PETER WONG** [6.01 p.m.]: I move Unity amendment No. 1:

No. 1 Pages 82 and 83, schedule 4.2 [16], proposed sections 344 and 345, line 1 on page 82 to line 13 on page 83. Omit all words on those lines.

I speak first to the part of the amendment that relates to the liability of legal practitioners for clients' costs in certain cases. Section 344 would make the Workers Compensation Commission different from other courts and jurisdictions regarding liability for clients' costs in certain cases. The conduct of legal practitioners practising in the Workers Compensation Commission should be the subject of the regulation and discipline imposed on practitioners under the Legal Profession Act. This is the situation in other courts and jurisdictions in New South Wales, and it should apply equally to practitioners in the workers compensation field. If a practitioner has been negligent or incompetent, then the sanctions should be those imposed by the Legal Profession Act, under which appropriate mechanisms apply to discipline practitioners. This should not be done by imposing draconian costs orders that can be imposed without notice on a practitioner by a commissioner.

In relation to cost penalties where an appeal is unsuccessful, the effect of section 345 would be to stop the vast majority of previously legitimate appeals, as the legal practitioners would have to be able to virtually guarantee that the appeal would produce a result that is 20 per cent better. Where an appellant appeals from a decision of an arbitrator to the commission constituted by a presidential member, and is successful in the appeal, he or she should be entitled to recover legal costs from the unsuccessful party. There can be no valid justification for imposing on a successful appellant the additional burden of discharging an onus that the success equates to a 20 per cent improvement and \$5,000 in order to justify the payment of his costs of that appeal.

**The Hon. PETER BREEN** [6.03 p.m.]: This provision is quite unfair, and it is one of the outcomes of not having in place a judicial system under which people are answerable under appropriate oaths of office to the court and to the separation of powers doctrine that this type of commission will have to come to terms with. Lawyers are singled out by this provision in a way that would not be necessary if it were recognised that under the Legal Profession Act not only that they are officers of the court but that they have obligations in relation to their conduct and are answerable to the Law Society or to the Bar Association. As the Hon. Greg Pearce pointed out, agents in the Industrial Commission, for example, are capable of charging quite excessive fees. They do so with impunity under this provision. For a lawyer who does the same thing the penalties are clear enough, and in that sense they operate quite unfairly. It seems to me that to penalise legal practitioners in this way creates in the bill a certain environment which begs the question: Why are we not to have a commission that is operating as a court? If that were the case, this kind of provision would be unnecessary. I commend the Hon. Dr Peter Wong's amendment.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [6.05 p.m.]: The Opposition supports the amendment moved by the Hon. Dr Peter Wong and was greatly persuaded by the erudite contribution by the Hon. Peter Breen.

**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) [6.05 p.m.]: This amendment would delete the cost penalties provided for under the bill for unsuccessful appeals in the commission. Those cost penalties are designed as reasonable controls on otherwise unrestricted further litigation. The cost penalties in the bill are similar to the controls used in other arbitration systems. The amendment would allow frivolous appeals to be pursued, with the likely outcome that legal costs will be paid. Rather than benefit injured workers, it will provide additional sources of work and income for the legal profession.

**Reverend the Hon. FRED NILE** [6.06 p.m.]: The Leader of the Opposition said he was persuaded by the remarks of the Hon. Peter Breen. Actually, the final words of the Hon. Peter Breen were in opposition to the amendment moved by the Hon. Dr Peter Wong, because the Hon. Peter Breen said that if this was a court we would not need this amendment. This is not a court, so we need to have this provision in the bill.

**The Hon. PETER BREEN** [6.07 p.m.]: I will endeavour to clarify what I said. I agree with Reverend the Hon. Fred Nile that if there were a court in place this kind of provision would be unnecessary. That is not to say that the provision is fair in circumstances where it applies only to legal practitioners. If a provision like this is unfair and discriminatory, it ought to apply across the board, not just to legal practitioners but also to agents. In the alternative—as the Hon. Dr Peter Wong is suggesting—it ought to come out altogether. It is an unfair, discriminatory provision and it casts over the legislation a shadow which is otherwise unnecessary.

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

**The Committee divided.**

**Ayes, 19**

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

**Noes, 14**

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

**Question resolved in the affirmative.**

**Amendment agreed to.**

**The Hon. PETER BREEN** [6.10 p.m.]: I do not move amendment No. 10 circulated in my name. I move Reform the Legal System amendment No. 11:

No. 11 Page 84, schedule 4.2 [16], proposed section 349, line 20. Omit "the Registrar". Insert instead "the President".

Under the Government's proposal, experienced and independent judges of the Compensation Court are removed from the system. The court is to be replaced with a commission, and a member's tenure is dependent on WorkCover and the Government. This raises a fundamental conflict with the principles of judicial independence in the State's Constitution, namely that judges cannot be removed by governments that do not like their decisions. Plainly speaking, it is conceivable that if the Government does not like the decisions made by the commission, it can remove its members. This would not seem to be in the interests of either employers or employees. My amendment regarding the commission endeavours to restore judicial independence and impartiality in the decision-making process. It also has the added benefit of ensuring that some of the current judges of the Compensation Court and their experience can be used. My amendment suggests replacing the registrar with a president as the person in charge of determining the affairs of the commission.

*[The Chairman left the chair at 6.18 p.m. The Committee resumed at 7.30 p.m.]*

**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) [7.30 p.m.]: This amendment will give the function of arranging the business of a new commission to the president rather than the registrar, as provided in the bill. The respective functions of the president, registrar and other members of the commission have been the subject of significant consultations. The amendment is opposed.

**Amendment negatived.**

**The Hon. PETER BREEN** [7.34 p.m.]: I move Reform the Legal System amendment No. 12:

No. 12 Page 85, schedule 4.2 [16], proposed section 351 (1), lines 4 and 5. Omit ", with the leave of the President",

The question of law arising in proceedings before the commission constituted by an arbitrator may be referred to by the arbitrator for the opinion of the commission. This amendment seeks to delete the words "with the leave of the President". As I said earlier, the president and deputy presidents of the commission are to be judicial officers. It is appropriate, if they are judicial officers, that an appeal should lie without the necessity for leave. I commend that amendment to the Committee.

**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 [7.34 p.m.]: The Government cannot support this amendment. It seeks to remove the provisions in the bill requiring leave to be granted by the president of the commission when questions of law are referred to by an arbitrator in proceedings. The reason requiring leave in that situation is a reasonable one. Arbitrators will generally be legally qualified and will be able to determine straightforward questions of law. To require the president to determine every question of law would result in the system becoming overburdened, add to costs and add to the adversarial nature of any dispute resolution. When such leave is not granted, parties retain their subsequent right of appeal from the arbitrator's decision. As I said earlier, this amendment is not supported by the Government.

**Amendment negatived.**

**The Hon. PETER BREEN** [7.35 p.m.]: I move Reform the Legal System amendment No. 13:

No. 13 Page 85, schedule 4.2 [16], proposed section 351 (3) and (4), lines 10-15. Omit all words on those lines.

This amendment has the same thrust as the previous amendment, which is to delete subsections (3) and (4). Again, it relates to the question of judicial officers. It is inappropriate to require leave in those circumstances. I commend the amendment to the Committee.

**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) [7.36 p.m.]: I do not desire to be repetitious but I seek to emphasise to the Committee the importance of not supporting this amendment. It is important that honourable members are aware that this amendment seeks to remove from the bill restrictions relating to obtaining leave and the minimum amount involved on appeals from decisions to presidential members of the new commission.

The amendments also aim to require that such appeals will involve a full rehearing and will apply the rules of evidence, including cross-examination procedures. These changes would detract from the savings anticipated in the new provisions. The provisions in the bill are fair and reasonable but include necessary checks so that trivial disputes are not appealed. I note that similar provisions in the District Court arbitration system prevent rehearings when the amount in dispute is less than \$40,000. The amendment is opposed.

**Amendment negatived.**

**The Hon. PETER BREEN** [7.37 p.m.]: I move Reform the Legal System amendment No. 14:

No. 14 Page 86, schedule 4.2 [16], proposed section 352, lines 1-26. Omit all words on those lines. Insert instead:

**352 Rehearing of matter subject of decision of Commission constituted by Arbitrator**

- (1) A party to a dispute in connection with a claim for compensation who is aggrieved by a decision in respect of the dispute by the Commission constituted by an Arbitrator may apply to the Commission constituted by a Presidential member for a rehearing of the matter.
- (2) An application is to be made to the Registrar within 28 days after the making of the decision concerned or within such further period as a Presidential member may allow..
- (3) The application may specify particular aspects of the dispute that are to be the subject of the rehearing. The aspects may be described by reference to specific issues in dispute, specific parties to the dispute, or otherwise.
- (4) On the making of the application, the Commission constituted by a Presidential member is to order a rehearing, but may decline to do so if it appears to the Commission as so constituted that the applicant failed to attend a hearing or conference before the Commission constituted by an Arbitrator with respect to the dispute and the applicant fails to satisfy the Commission constituted by a Presidential member that there was good reason for the failure to attend the hearing or conference.
- (5) If the rehearing is ordered in connection with a decision of the Commission constituted by an Arbitrator, the decision ceases to have effect and the matter is to be determined by the Commission constituted by a Presidential member.
- (6) On a rehearing, the rules of evidence apply to the Commission constituted by a Presidential member and witnesses may be examined and cross-examined.
- (7) The Commission constituted by a Presidential member may, following the rehearing, confirm, set aside or vary the decision made by the Commission constituted by an Arbitrator.

This amendment seeks to delete new section 352, which deals with an appeal against a decision by the commission constituted by an arbitrator. Currently, an appeal from a decision by an arbitrator is only by leave and will be done on the papers. Although the idea behind this is to encourage informal settlement disputes, Parliament has recognised that the rights of the parties must be properly protected. Without rehearings, when evidence is given in open court under oath and the evidence is recorded, parties cannot test whether claimants are telling the truth or exaggerating their claims. Workers cannot test the evidence against them. None of the stakeholders can know what has or has not been taken into account. Without this provision both workers and employers would be deprived of the right enjoyed by other people in similar circumstances.

I must emphasise that the idea behind this amendment is that it presupposes that the commissioners will be judicial officers and that the structure of a court will be retained. Without labouring the point about the structure of the court, the idea of the court is that the judicial officers are answerable to a higher court—to a higher authority, if you like. As the commission is presently constituted, they are not answerable to anybody except to the government that appoints them. I emphasise once again the importance of retaining the judicial structure that this commission—previously the court—has grown up with for nearly 100 years. I commend the amendment to the Committee.

**The CHAIRMAN:** There is a conflict between Reform the Legal System amendment No. 14, Greens amendment No. 89 and Unity amendment No. 2.

**Reverend the Hon. FRED NILE** [7.40 p.m.]: The amendment refers to a presidential member. There is only one president and the deputy-presidents. Who does the amendment refer to?

**The Hon. JOHN DELLA BOSCA:** I assume it means any appeal to either the president or deputy-presidents from the arbitrator.

**Amendment negated.**

**The Hon. PETER BREEN** [7.40 p.m.]: I move Reform the Legal System amendment 15:

No. 15 Page 87, schedule 4.2 [16], proposed section 354. Insert after line 18:

- (1) This section applies to the Commission constituted by an Arbitrator, and not to the Commission constituted by a Presidential member.

The amendment adds to the proposed section, which applies to the commission constituted by an arbitrator and not the commission constituted by a presidential member. As I said earlier, and without wishing to repeat myself, the purpose of having a judicial structure in place is to enable the workers who access the commission to have the benefits of the right of appeal on the same basis as they would have if the Compensation Court were still in place. So far as those proceedings are concerned I commend the amendment to the Committee.

**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) [7.41 p.m.]: The Government does not support the amendment.

**Amendment negated.**

**The CHAIRMAN:** I do not propose to put Greens amendment No. 90 because it is the same as Reform the Legal System amendment No. 15.

**The Hon. PETER BREEN** [7.42 p.m.], On behalf of the Hon. Dr Peter Wong: I move Unity amendment No. 3:

No. 3 Page 87, schedule 4.2 [16], proposed section 354 (1)-(3), lines 19-28. Omit all words on those lines. Insert instead:

- (1) The Commission is to apply the rules of evidence in proceedings in any matter before the Commission.

This amendment refers to rules of evidence in proceedings before the commission, which includes the arbitration phase before the proceedings. The Government has said that it proposes to follow the model established in the Industrial Relations Commission. That commission has a conciliation phase and an arbitration phase. Once the matter proceeds to arbitration, the commission conducts itself as a court of record. There are rules of evidence, parties are sworn in to give their evidence, transcripts are taken and court proceedings apply as to the taking of evidence.

If the Government is serious about following that model, then it should do so. As the provision stands, the Industrial Relations Commission model has not been followed. It is important that there are proper rules of evidence. Without them fraud is possible. There will be no way of prosecuting a fraudulent claimant without first having committed the claimant to his perjury on oath, which is possible only under a judicial structure. Without rules of evidence and procedures, this legislation allows a commissioner to separately conference with each of the represented parties. Against the applicant, both the employer and insurers are entitled to be separately represented. That in itself is a concept that is not recognised in any other court. Once an insurer claims on its insurance policy, the rights of the insured are subrogated to the insurer, who then conducts the litigation on behalf of the defendant.

There is no other jurisdiction that I am aware of where the defendant and its insurer can each be separately represented. This is important in the context that the Act allows for separate conferencing to take place by the commissioner with individual parties. For example, the commissioner could decide to invite an employer representative into his chambers and have a private discussion with that person regarding the applicant. The applicant will never be told what discussion has taken place or what has been said about him or her. Obviously the applicant cannot challenge any information that was untrue or inaccurate that was placed before the commissioner in that context. That cannot occur if the rules of evidence are adhered to and proper procedures applied. I commend the amendment to the Committee.

**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) [7.44 p.m.]: It is important for the Committee to understand that if this amendment were adopted it would undermine the entire purpose of the reforms. The amendment cannot be supported. The commission requires flexibility to determine proceedings before it. The requirement for the rules of evidence to be applied introduces an unnecessary degree of formality and complexity that will lead to additional costs and further concomitant complexities.

There are numerous examples of tribunals and arbitration systems where the rules of evidence do not apply. Even though they do not apply formally, they are still given appropriate weight in the decision-making process. Examples of such tribunals in our own jurisdiction operating very successfully are the Fair Trading Tribunal, the Medical Tribunal, the Residential Tenancies Tribunal and the Independent Pricing and Regulatory Tribunal. The Government makes no apologies for its intention that this system will be an inquisitorial one, seeking truth and fairness, rather than an adversarial system such as that apparently envisaged by the Hon. Peter Breen.

If the amendment is successful, it will undermine the entire point of the reforms that the Government has placed before the Committee. In respect of tribunals and the involvement of the legal profession, it is probably worthwhile to comment on the way in which these things change. As many people know, one of the concerns of the legal profession in respect to some of these changes was their potential impact on the number of matters that are suitable for barristers to be involved in in the workers compensation and common law jurisdictions.

While it is true that the set of arrangements that this legislation seeks to put in place will make much less work for the bar it has to be understood that a number of senior barristers, some of whom are now judges, have made the observation to me privately—I do not think they would say it publicly, for all sorts of reasons: first, it would be improper and, second, it would make them unpopular with their brothers and sisters—that when they first started work at the bar a large amount of work performed by the New South Wales bar was landlord and tenancy work.

Barristers performed a substantial amount of that work. What was, if you like, the bread and butter of the bar has now been almost entirely squeezed out by the administrative tribunal process, which works very well. There are very few complaints about its fairness. Although from time to time it has been remodelled and redeveloped, it serves the people of New South Wales well and dispenses an appropriate level and form of justice. As I have said repeatedly, it is not intended for workers compensation disputes to become complex matters of civil litigation. Where they are they will be heard by a presidential member who is judicially qualified. Obviously if they are industrial accidents, they will be heard as common law matters.

It is important to understand that the disputes we are trying to resolve are matters that should be able to be resolved fairly simply by qualified legal persons sitting as arbitrators. As I said, attempts to impose the rules of evidence and other criteria are designed to subvert the intention of the scheme put before the Committee.

Last, but not least, on the issue of fraud and the rules of evidence I am not an expert lawyer, but I believe that for practical purposes these essentially become furphies. The fact of the matter is that if fraud is to be detected in the system, it is to be detected by the requirement of early liability so that fraudulent cases and claims that are not properly made out, or unfair claims, can be detected early in the process.

That is unlike the current situation, in which protracted arbitration and confused and lengthy arguments lead to actions against potentially fraudulent claims being impossible to enforce. It is important to bear all those arguments in mind, but any attempts to impose the rules of evidence unilaterally throughout the commission's work would render it useless.

**Reverend the Hon. Fred Nile:** I note the person who hears these cases is an arbitrator. You used the term "presidential member" to describe that arbitrator.

**The Hon. JOHN DELLA BOSCA:** No. To clarify that, presidential members—I cannot speak for honourable members who are moving the amendments and using that terminology—are the president and the two deputy-presidents. They would be obliged to be legally qualified to hear matters of law. Arbitrators will mostly be legally qualified but they will hear lower level disputes.

**Reverend the Hon. Fred Nile:** Most of the hearings will be before the arbitrators?

**The Hon. JOHN DELLA BOSCA:** That is right.

**Reverend the Hon. Fred Nile:** The thing that concerns me was turning the arbitrators' hearings into full-blown court hearings. The Hon. Peter Breen was talking about going into chambers, that is, the judge's chambers. That has all the aspects of a full-blown court hearing. The commission is not a court, that is the distinction we are making, so the whole thing can be more informal, faster and more economical.

**The Hon. JOHN DELLA BOSCA:** That is right.

**The Hon. PETER BREEN** [7.51 p.m.]: If I can just clarify the point Reverend the Hon. Fred Nile just made, one of the advantages of a judicial or a quasi-judicial structure is that parties do not have private conversations with the registrar or president or whoever it might be. In an informal structure, such as the commission contemplated in the bill, those types of discussions are quite common. Often one party does not know there has been a discussion between the other party and various members of the commission. The point I would like to make is that we lose the advantage of that when we do away with the judicial structure. The Minister would say that is an advantage, as it creates informality and people are not under the same kind of pressure as they are in a judicial environment, but the quid pro quo of that is that there are no rules of evidence.

**Reverend the Hon. Fred Nile:** That is what we have adopted. That is what the bill is all about.

**The Hon. PETER BREEN:** It is debatable. Is it a reform or is it a retrograde step? There is a position in the middle, something between the two, that I have been suggesting in the course of my amendments, and that is a quasi-judicial body. We are abandoning a body that has been around for a long time and has worked well. The Compensation Court is the best court in the State. We are abandoning that in favour of a body that has no track record. All I have been suggesting from the outset is there ought to be some position in the middle. However, my amendments have not been successful and on that basis I wish the Minister well with the new commission.

**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) [7.52 p.m.]: I make one point to the Hon. Peter Breen. I think he referred to the rules of procedural fairness. The rules of procedural fairness will still apply. All parties have to know the case against them, and all the normal principles of procedural fairness will still apply at any of the arbitral or presidential hearings in the new commission.

**The Hon. PETER BREEN** [7.53 p.m.]: I do not wish to be too pedantic about this, but procedural fairness raises a whole new raft of issues. Is this an independent body? Does an independent person coming before this body have the right to be heard when discussions are going on between the various parties? All I am suggesting is that even procedural fairness is in some doubt in a body like this where the judicial rules do not apply. It may work, and if it works as well as the Motor Accidents Authority, well and good, but it is a different kind of body.

**Amendment negatived.**



**The Hon. IAN COHEN** [7.54 p.m.], by leave: I move Greens amendments Nos 91, 92 and 95 in globo:

No. 91 Page 87, schedule 4.2 [16], proposed section 354 (2), line 25. Insert "The Commission must provide each party with procedural fairness." after "permits."

No. 92 Page 87, schedule 4.2 [16], proposed section 354. Insert after line 33:

- (5) The Commission is not to determine a matter before the Commission without first making all reasonable efforts to conciliate the matter. If conciliation is unsuccessful, the Commission constituted by an Arbitrator is to proceed to determine the matter in accordance with any applicable provisions of the *Arbitration (Civil Actions) Act 1983*.

No. 95 Page 88, schedule 4.2 [16], proposed section 356. Insert after line 26:

- (1) This section applies to the Commission constituted by an Arbitrator, and not to the Commission constituted by a Presidential member.

These amendments recognise that arbitrators are an important component of the new system. They are limited to hearing the matters they are competent to resolve. These amendments allow the arbitrator to refer a matter to a presidential member when the arbitrator believes the matter is inappropriate for arbitration. Amendment No. 95 limits the restrictions on representation before the commission under proposed section 356 to matters heard before an arbitrator. This ensures that if conciliation does not resolve a matter, it proceeds to an arbitrator and they bind the arbitrator to provide procedural fairness under the relevant provisions of the *Arbitration (Civil Actions) Act*. I commend Greens amendments Nos 91, 92 and 95 to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [7.56 p.m.]: Amendment No. 91 is considered to be unnecessary. New section 354 is not about denying the parties procedural fairness. The provision makes clear a number of points. The reduction in formality and technicality to be applied to proceedings only extends as far as "... the proper consideration of the matter permits". However, the provision balances this consideration with the need to provide a flexible dispute resolution service and ensures that minor disputes are not conducted with unnecessary complexity and formality.

The Government also opposes Greens amendment No. 92. New section 355 already provides for conciliation of disputes by arbitrators. That aspect of the amendment is unnecessary. Similarly, the provisions as drafted already contain sufficient detail relating to the arbitration process. Therefore it is unnecessary to apply the *Arbitration (Civil Actions) Act*. Amendment No. 95 is not supported. It would effectively remove the right to legal representation for injured workers in appeal proceedings and proceedings before presidential members. The Government is not prepared to be party to such an antiworker amendment.

#### **Amendments negated.**

**The Hon. IAN COHEN** [7.58 p.m.]: by leave, I move Greens amendments Nos 93, 94, 98, 99, 108 and 109 in globo:

No. 93 Page 88, schedule 4.2 [16], proposed section 354 (5)-(8), lines 1-19. Omit all words on those lines.

No. 94 Page 88, schedule 4.2 [16], proposed section 355. Insert after line 25:

- (2) The Commission constituted by an Arbitrator may refer any dispute involving matters that it considers cannot be dealt with appropriately by arbitration to a Presidential member for hearing and determination.

No. 98 Page 92, schedule 4.2 [16], proposed section 363, line 29. Omit "other than the Arbitrators".

No. 99 Page 93, schedule 4.2 [16], proposed section 364 (1), line 2. Omit "Minister". Insert "President of the Commission".

No. 108 Page 96, schedule 4.2 [16], proposed section 372, line 18. Omit "Registrar". Insert instead "President".

No. 109 Page 97, schedule 4.2 [16], proposed section 375 (2), line 6. Omit "Registrar". Insert instead "President".

Greens amendment No. 93 removes the ability of the commission to determine a matter without holding a formal conference without one of the parties present or to hold separate conferences with each party. It also deletes subsection (8), which refers to work injury damages. That matter has been resolved by the Sheahan inquiry. This will ensure an open and transparent determination of all claims to allow all parties to be satisfied that they have been heard and that the decision maker has turned his mind to germane issues. The right to confront the other party in a dispute is basic to the concept of justice in our society and there is no reason why injured workers should be denied these rights.

Amendment No. 94 recognises that some issues are too complex to be dealt with by arbitrators and should be immediately referred to a presidential officer who will have more experience. To force the matter before an arbitrator, as the bill in its current form would do, would limit the rights of injured workers to a fair hearing. Presidential officers have a higher standard of training and experience greater judicial independence and would therefore be in a better position to resolve the complex issues that arise in workers compensation disputes.

Amendments Nos 98, 108 and 109 would ensure that it is the president and not the registrar of the commission who gives general control and direction to arbitrators, including making decisions about which arbitrators hear particular proceedings and classes of proceedings. The registrar is an administrative officer of the court. It is inappropriate to place arbitrators under the direction of an administrator. While in reality the registrar may perform much of the actual scheduling work, he or she should do so under the direction of the president of the commission as the senior judicial officer of the commission. The amendments recognise the judicial functions performed by the arbitrators. Amendment No. 99 would allow the president, not the Minister as would be the case under the new section, to establish the rules of the commission. The independence of the commission is important to maintain the rights of those who appear before it. If the commission is not allowed to determine its own rules it would be directly under the control of the Minister. This would represent a failure to protect the independence of the commission from the power of the Executive Government. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.02 p.m.]: The Government opposes all the amendments. Amendment No. 93 would remove the flexibility that the draft bill provides. There is no point in having a straightforward dispute dealt with in an overly complex legalistic manner. It does not benefit injured workers and it creates delay. Not only do injured workers have legal rights asserted by the legal profession; they have the right to receive their compensation in a timely manner. This amendment would deny that process. The only party to benefit from such a legalistic process would be the legal profession. In relation to amendment No. 94, the workers compensation scheme is a no-fault system. The overwhelming majority of disputes can be resolved by arbitrators because they are relatively simple. The bill recognises that some legal questions that arise should be referred to a presidential member for determination. New section 351 allows these questions to be referred.

No further amendments in this regard are necessary. In relation to amendment No. 98, there are other examples of guidelines and rules being approved by the Minister rather than the body that is required to administer them. The Local Court's powers to make rules are limited in a similar fashion by the requirement to have the responsible Minister approve the rules before they become operational. It is not a plan to maintain control of the process by government. Both the registrar and the president retain substantial powers to direct and control practices within the commission. In the Government's view it is entirely appropriate for the Minister to be involved in this way. Amendment No. 99 is also opposed. On amendments Nos 108 and 109, the role of the president is to exercise judicial functions, hear appeals and consider questions of law. It is critical for the president to be free to exercise these functions. There is no benefit from or need for the day-to-day operational aspects of the commission such as delegation of cases to arbitrators also to fall to the president.

**Amendments negatived.**

**The Hon. Dr PETER WONG** [8.05 p.m.]: I move Unity amendment No. 4:

No. 4 Page 88, schedule 4.2 [16], proposed section 354 (6), lines 5-8. Omit all words on those lines.

This amendment omits the provision that enables the commission to proceed to determine matters without holding any conference or formal hearings. This is a dangerous provision that could result in the commission making ill-informed judgments. In the sensitive area of income maintenance for injured workers, justice must not only be done but must be seen to be done. The provision that the bill would delete involves a massive shift from the current process of a fair judicial hearing to a completely bureaucratic determination behind closed doors.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.05 p.m.]: The Government opposes the amendment. The intent of the bill is to provide a flexible dispute resolution system. The amendment would substantially undermine that goal.

**Amendment negatived.**

**The Hon. Dr PETER WONG** [8.06 p.m.]: I move Unity amendment No. 5, which relates to transcripts of proceedings before the commission.

No. 5 Page 88, schedule 4.2 [16], proposed section 354. Insert after line 19:

- (9) A party to a dispute may apply for a transcript of any hearing or conference in which the party is entitled to participate to be made available to the party. Such an application is to be made before the hearing or conference concerned and in accordance with any Rules of the Commission.

To ensure there is openness and transparency in the proceedings before the commission, including those held before arbitrators, it is essential that each party have available a transcript of the proceedings. This would ensure that the participants to the dispute conduct themselves in a manner consistent with a court hearing. The Hon. Ian Macdonald is concerned about cost. The amendment would avoid any possible disputes about evidence given by witnesses in the proceedings. In court rooms all over New South Wales, court reporters are frequently asked to repeat the evidence that a witness gave to an earlier question in the proceedings so that there will not be a misunderstanding or misstatement of the evidence by a judge or arbitrator in giving a judgment.

The provision of a transcript is vitally important to the appeal rights of the parties as the court reviewing the decision must have access to the transcript of the proceedings it has to review. I point out to the Government that a transcript would not have to be kept of every dispute. The amendment states "such an application is to be made before the hearing or conference concerned and in accordance with any rules of the commission." Only in very serious cases would the president or the deputy president desire to have the transcript kept. So the requirement would not apply to every dispute. It is a very reasonable request that I think the Government should support.

**The Hon. RICHARD JONES** [8.08 p.m.]: I think it is a very reasonable request and the Government should support it.

**Reverend the Hon. FRED NILE** [8.08 p.m.]: I seek clarification. The amendment would require that the parties be provided with a copy of the transcript, but the rules for the commission have not yet been drawn up. There may not be any transcripts for cases heard by the president or the deputy presidents. If there are informal discussions before an arbitrator with questions and answers and points being made I do not know whether there is a transcript in the same way as there is in a court. I am only asking the question. It seems that there may not be a transcript.

**The Hon. IAN COHEN** [8.09 p.m.]: The amendment would increase openness, transparency and accountability. This appears to be a straightforward issue. The Greens support the amendment and if the Government cannot we wonder why.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.09 p.m.]: The Government opposes Unity amendment No. 5. It is unnecessary for full transcripts of arbitration proceedings to be kept. For instance, arbitration in the District Court operates without full transcripts, as do many other arbitration systems. This amendment will add to the unnecessary level of formality. It will undermine the intent to provide a responsive dispute resolution system. I am advised that it would be an extremely costly exercise.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [8.10 p.m.]: Unity amendment No. 5 refers to "a transcript". The Hon. Ian Macdonald referred to "full transcripts". I understand that if there is not a full reporting service this will impose an unnecessary cost burden. However, if notes and transcripts are being taken, the provision of a transcript would be fair. I ask the Parliamentary Secretary to clarify what he believes is the difference between "transcript" and "full transcript"—if indeed there is a difference. As I said, the Parliamentary Secretary referred to a "full transcript". I suspect that the amendment relates simply to "a transcript", which allows for the reporting of whatever notes or transcript of the meeting are kept.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.11 p.m.]: I am advised that there is no difference.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [8.11 p.m.]: If there is no appeal, presumably it is tough luck if the parties want a transcript; they will simply get the verdict, with or without reasons—I cannot remember whether an earlier amendment relating to reasons was accepted by the Committee—as to the decision. The point is that if one party appeals the decision and wants to take it to a judge, the transcript must be relevant. If a person is disadvantaged because he or she has language difficulties, the transcript must be relevant.

In these days of voice recognition software and ease at least of recording proceedings, surely the proceedings could be automatically taped, and a transcript could be produced if necessary. A transcript would not be needed in all cases. It seems a travesty of justice if the tribunal, which sounds like a mickey mouse court, cannot produce a transcript. I am surprised by the Government's refusal. However one wants to define the tribunal, it is pretty mickey mouse if the parties cannot follow up what happened in any way after the event—to make an appeal or an opinion as to what happened.

**The Hon. Dr PETER WONG** [8.12 p.m.]: As the Hon. Dr Arthur Chesterfield-Evans said, a transcript can be just a tape recording.

**The Hon. Richard Jones:** It can be on a disk.

**The Hon. Dr PETER WONG:** As long as it can be read, it does not need to be typewritten. That being the case, all one simply needs is a tape recording, as suggested by the Hon. Dr Arthur Chesterfield-Evans. The Parliamentary Secretary can tell me if I am wrong.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.13 p.m.]: It is not envisaged that there will be transcripts in these arbitration hearings. It is not done in the District Court, and it is not envisaged to be done here. However, there will be a comprehensive record of decisions and, of course, that will be available to the parties.

**Amendment negatived.**

**The Hon. Dr PETER WONG** [8.14 p.m.]: I move Unity amendment No. 6:

No. 6 Page 88, schedule 4.2 [16], proposed section 355, lines 20-25. Omit all words on those lines.

Often it is inappropriate for a judge or a member of a tribunal to arbitrate a matter if he or she has been involved in conciliation of the same dispute. During the conciliation phase the arbitrator or tribunal member may receive information that is inadmissible in the proceedings that may prejudice a fair hearing of the dispute. Generally, where possible, industrial tribunals have separate members dealing with the conciliation and arbitration phases. That model should apply to this bill. When an arbitrator is appointed to impose on the parties a resolution to their dispute, it is inappropriate for that person also to be involved in conciliation of the dispute. It must be remembered that there are other mechanisms within the framework of the Act, such as compulsory offers of settlement, cost penalties and so on, which will have the effect, hopefully, of bringing the parties to their own resolution of the dispute. Once the matter reaches the arbitration phase it should proceed as an arbitration without the arbitrator involving himself in an attempted conciliation.

**Reverend the Hon. FRED NILE** [8.15 p.m.]: It appears that this amendment will omit all the words in new section 355, which states:

The Commission constituted by an Arbitrator is not to make an award or otherwise determine a dispute referred to the Commission for determination without first using the Arbitrator's best endeavours to bring the parties to the dispute to a settlement acceptable to all of them.

Surely that is the objective we are trying to achieve in dispute resolution. And the Hon. Dr Peter Wong wants to remove that from the bill.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.16 p.m.]: The Government opposes this amendment. The introduction of a requirement for conciliation was a key commitment given to the Labor Council in developing the revised dispute resolution system. The bill provides arbitrators with flexibility so that if it is appropriate the arbitrator can conciliate. Not all disputes need to proceed to arbitration. The Government gave this commitment to the Labor Council having regard to the structure of the dispute resolution process.

**The Hon. MALCOLM JONES** [8.16 p.m.]: I seek clarification from the Hon. Dr Peter Wong. New section 355 is such a virtuous section in this whole bill, why does the honourable member want to remove it? I cannot understand the reasons the honourable member wants to remove it. I am simply seeking clarification.

**The Hon. Dr PETER WONG** [8.17 p.m.]: If the Hon. Malcolm Jones had been listening to me, I made it clear—I read the whole passage very slowly—that arbitration and conciliation do not occur at the same time, and that different people should arbitrate and conciliate.

**Amendment negatived.**

**The Hon. MALCOLM JONES** [8.18 p.m.]: I move the Outdoor Recreation Party amendment:

Page 93, schedule 4.2 [16], proposed section 364. Insert after line 27:

- (3) On or before 1 July in each year (commencing 2002) or as soon as practicable after each such date, the Minister is to cause the Rules of the Commission, as in force for the time being, to be laid before both Houses of Parliament.

This amendment will enable Parliament to have an overview of the commission's rules without allowing necessarily political interference for the sake of it. We have embarked upon a review of workers compensation and the Government should be able to carry out a revision of this nature, and get on with it. The Government, and the Minister in particular, will be measured by the degree of success, or lack of it, of this review over time. Undue interference in the interim will not be constructive nor will it help the injured workers in any way. The words "as in force for the time being" infers that the rules will change from time to time. As the rules are changed by the commission they will be available to Parliament. If too much licence is taken, and serious issues are to be considered, the bill can be amended by Parliament. I commend the amendment to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.20 p.m.]: As stated, this amendment proposes the annual tabling in the Parliament of the rules of the new commission. I note that the bill provides for a heavy level of monitoring and assessing of the work of the commission by the Independent Pricing and Regulatory Commission, the committee chaired by Reverend the Hon. Fred Nile, the Auditor-General and other bodies. That is a natural way of revision and means that the findings will be public, although I believe that the committee might want to look at those findings before the dates mentioned. The Government supports the amendment.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [8.21 p.m.]: I wish to amend the Outdoor Recreation Party amendment. I move:

That the amendment be amended by the deletion of all words after (3) and the insertion of the words:

Rules of the Commission are to be laid before each House of Parliament by the Minister or by the Clerk of that House.

- (4) Rules of the Commission have no effect unless each House of Parliament passes a resolution approving the Rules.

The rationale behind that is consistent with the position that the Opposition has taken throughout this debate. As honourable members would be aware, the Opposition has never hidden from the fact that the process by which the rules of the commission are made public are extremely important. We do not believe that the Committee should be put in the position of having the matters referred to in the amendment moved by the Hon. Malcolm Jones laid before both Houses of Parliament. That would have the effect of rendering Parliament useless to correct any errors it found in the rules upon their being tabled.

The amendment, as well meaning as it is, does not provide an opportunity for these matters to be amended or corrected or become the subject of any available process other than debate. In other words, we would have a take-note debate about the rules of the commission. Irrespective of how bad or how good the rules are, honourable members might have a different view about them. In the amendment moved by the Hon. Malcolm Jones there is absolutely no way in which any member can effectively correct anything in relation to the rules.

The subsequent amendment by the Opposition is proper. It states, "Rules of the Commission are to be laid before each House of Parliament by the Minister or Clerk of that House", and that is consistent with the amendment. My subsection (4) states, "Rules of the Commission have no effect unless each House of Parliament passes a resolution approving the Rules." This goes to the nub of the discussions about the process of this bill that the Coalition has undertaken over the past couple of weeks.

In the rules of the commission there is no opportunity for Parliament, in particular the Legislative Council, to maintain its real role as the House of review; it would become the House of inane debate if it could not rectify anything contained in the legislation or in the amendment moved by the Hon. Malcolm Jones. The Opposition's amendment puts the process into perspective. Any suggestion that we could put in place a disallowance motion with regard to the rules of the commission is an impractical position, as it would be if it applied to the guidelines. The Opposition has never suggested that it is prepared to stop the processes by which the Workers Compensation Commission can be established.

The Opposition has never suggested that it is against dispute resolution. All we have asked for is an opportunity for Parliament to properly debate and resolve any outstanding matters that may well come to light in regard to the guidelines or rules of the commission. I am surprised that the Government appears to be prepared to knock back the Opposition's motion. Our motion ensures that the rules of the commission come back to Parliament to be resolved and it creates a shared ownership by all members of Parliament of the rules of the commission.

The Minister for Industrial Relations has put together legislation that basically says that he is the one who will determine how the commission will operate irrespective of the fact that a constitutionally independent court will be closed down. That court will be replaced by a commission that has a judicial officer as its head. For all intents and purposes that judicial officer will not have the independence of any other judicial officer in this State. It is a bit of a furphy to suggest that we will have a true judicial officer with true judicial independence. The Minister may well say that that is rubbish because the judicial head will have that independence.

However, what the Minister has said during this debate and what the bill provides are totally different. At the end of the day the Minister, who will work with the WorkCover Authority and speak to the Advisory Council, will have sole discretion; the buck stops with him in relation to the rules of the commission. If the properly constituted, independent Compensation Court is to be replaced by an alternative court, the new Workers Compensation Commission that the Minister will have complete and utter control over, the Opposition does not believe that that is fair, equitable or proper.

For that reason, the Opposition has made it perfectly clear that probity is paramount; transparency is absolutely everything in regard to this bill. However, if there is no transparency and no opportunity for Parliament to ensure that the Government gets it right—and Parliament has an ongoing role to ensure that the rules of the commission, the guidelines and selection criteria for the medical specialists are right—and if we have no surety in the outcomes, there is no way that the Opposition can support such a fundamentally flawed process.

**The Hon. RICHARD JONES** [8.29 p.m.]: I move an amendment to the amendment of the Hon. Malcolm Jones:

That the amendment be amended by the deletion of all words after "proposed section 364" and the insertion of the words "lines 28 and 29. Omit all words on those lines. Insert instead:

- (3) Sections 39 (The making of statutory rules), 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to Rules of the Commission in the same way as those sections apply to statutory rules."

It is not true to say that a disallowance has no effect. Many disallowed motions have been moved in this Chamber since Reverend the Hon. Fred Nile and I have been members of this Parliament—a period of approximately 20 years. Disallowance motions are not always proceeded with; sometimes giving notice of a motion for disallowance is sufficient to prompt the Government to reconsider a regulation. Sometimes the Government rewrites the regulation and may even replace the regulation entirely without the disallowance motion going ahead. The availability of the procedure for moving a motion for disallowance will often put pressure on the Government to make sure that the rules are right in the first place. The Government has the sword of Damocles hanging over it.

The other point I make is that we can give notice if the rules are no good, which is the normal way of doing things. The way that the Leader of the Opposition has proposed to proceed is unusual; I have not heard of a precedent for it. Another way of approaching it would be to have the rules made disallowable. That is why I have moved my motion to amend the amendment of the Leader of the Opposition.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [8.31 p.m.]: I speak in support of the amendment moved by the Leader of the Opposition and against the amendment moved by the Hon. Richard Jones. The Hon. Richard Jones indicated that the purpose of his amendment was to ensure that the rules are good. His amendment provides a degree of long-term instability whereas the amendment moved by the Leader of the Opposition allows the proposed rules to be checked to make sure that they are good, and then provides for them to be put in place. That is the difference between the two amendments.

The problem confronting honourable members is that we have not seen the rules and we do not know what is happening. We have to trust the fallibility of the Special Minister of State. He is a charming fellow. He is nice. He is amiable and he works hard, but I have to say that he is not infallible. He makes mistakes. He may not make a mistake in this instance, but honourable members need to check to make sure that the rules that come

before Parliament are right. We must not buy a pig in a poke, because the issue is too important. The nameless and faceless bureaucrats of WorkCover who have put the rules to the Minister are not infallible either. Sometimes judges' decisions—

**The Hon. Ian Macdonald:** Are you saying that judges are faceless bureaucrats?

**The Hon. DUNCAN GAY:** No. I would never go that far. The point I make is that the amendment moved by the Leader of the Opposition is a proper one. The amendment moved by the Hon. Malcolm Jones—we are surrounded by Joneses—is a nothing-type amendment. I do not know why he wasted his time moving it. He was critical of the Unity party for its amendment. The last thing we need in relation to this legislation is tokenism, and the amendment moved by the Hon. Malcolm Jones is the greatest bit of tokenism I have seen in a long time. If that is the best that he can do, he is wasting his time.

**The Hon. Malcolm Jones:** Point of order: I am being criticised for being critical of the amendment moved by the Hon. Dr Peter Wong. *Hansard* will show that I simply asked for clarification. When has clarification ever been criticism? I ask the Deputy Leader of the Opposition to withdraw that remark.

**The Hon. Duncan Gay:** To the point of order: If that sensitive soul feels hurt by my remark, I withdraw it.

**Reverend the Hon. FRED NILE** [8.34 p.m.]: It seems that the amendment moved by the Hon. Malcolm Jones will allow the rules to be placed before both Houses of Parliament. We can engage in a take note debate and the rules can also be referred to General Purpose Standing Committee No. 1. It seems to me that the main aspect of the amendment moved by the Opposition or the Liberal Party is that, whether intended or not, it is a delay mechanism. My concern has always been to get this bill passed. It is delayed already. This workers compensation legislation is delayed already.

**The Hon. Duncan Gay:** By about five years.

**Reverend the Hon. FRED NILE:** That is right. I want to see the commission operating. The Opposition's amendment states that the rules will be laid before the House and then, at some point, the House will pass a resolution approving the rules. That means that the whole structure, including the commission, cannot begin to operate. It cannot start until some future date when this House approves the rules. We do not know when that will be. We do not know how long that will take and, as the Hon. Richard Jones has pointed out, that is unprecedented. I have spoken to the Opposition leaders who said that honourable members should support the Opposition amendment until the rules are ratified.

**The Hon. Duncan Gay:** If we had the rules, we could pass them now.

**Reverend the Hon. FRED NILE:** I said, "How do we ratify things in the upper House? I have never heard of ratifying anything in the upper House." That is my concern. If we were debating to approve the rules and we approve half the rules but not approve the other half of the rules, what would happen then? What if the House amended the rules or honourable members changed the rules? All those matters are options created by the amendment moved by the Opposition.

**The Hon. Duncan Gay:** If you and your friends had the rules before Parliament now, we could pass them; but they are not here.

**Reverend the Hon. FRED NILE:** That is right.

**The Hon. Duncan Gay:** You want us to pass something we have not seen.

**Reverend the Hon. FRED NILE:** For the main reason that Parliament does not normally pass the rules. When did we pass the District Court Rules? When did the Opposition debate those in the House? I have been a member of this Parliament for 20 years and I have never seen the rules for any court, commission of tribunal being debated since I have been a member of Parliament. That is my concern. Let us get the commission up and going.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [8.36 p.m.]: I ask the Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on

Public Sector Management, and Minister Assisting the Premier for the Central Coast a question: Can the workers compensation commission commence its work without the guidelines being finalised?

**The Hon. John Della Bosca:** The guidelines or the rules of the commission?

**The Hon. MICHAEL GALLACHER:** The first thing is the guidelines.

**The Hon. John Della Bosca:** The medical impairment guidelines?

**The Hon. MICHAEL GALLACHER:** The WorkCover guidelines.

**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) [8.36 p.m.]: I could not imagine that the system or scheme of arrangement that is put forward in this bill could be properly commenced without the guidelines. That is correct.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [8.36 p.m.]: Therefore the Reverend the Hon. Fred Nile is absolutely incorrect.

**The Hon. John Della Bosca:** This is cross-examination.

**The Hon. MICHAEL GALLACHER:** Yes.

**The Hon. John Della Bosca:** Do the rules of evidence apply?

**The Hon. MICHAEL GALLACHER:** This is what the Committee stage is all about.

**The Hon. PETER BREEN** [8.38 p.m.]: The amendment moved by the Hon. Malcolm Jones is worth some consideration. It seems to me that it is a position that is somewhere between the two positions that are being offered between the Opposition and the Government.

**The Hon. Duncan Gay:** No. It is between our amendment and the amendment of the Hon. Richard Jones.

**The Hon. PETER BREEN:** We are between a rock and a hard place. The amendment by the Hon. Richard Jones gives the opportunity to Parliament, as I understand it, to consider the regulations, discuss them and debate them in what I understand is the same form as a take-note debate. If Parliament decides in a take-note debate that there needs to be amendment of the rules or some aspect of them needs to be cancelled, according to the advice that I have been given, the amendment moved by the Hon. Richard Jones allows that to happen.

**The Hon. Michael Gallacher:** The amendment moved by the Hon. Malcolm Jones does not, but the amendment moved by the Hon. Richard Jones does.

**The Hon. PETER BREEN:** That is right.

**The Hon. Michael Gallacher:** I will come back to that.

**The Hon. PETER BREEN:** The point I want to make in this small contribution to the debate is that the amendment suggested by the Hon. Richard Jones enables us to get the best of both worlds—to my mind, anyway. We get the regulations; we get to look at them before they are implemented; we get to debate them, if that can be done in a take-note debate; and then we have the opportunity to make a contribution and we have an input.

With the present situation we have to rely on the good grace of the Government and, frankly, the Government's good grace on the issue of workers compensation has not been very satisfactory. The amendment of the Hon. Richard Jones provides us with an opportunity to discuss the regulations in this Parliament, although it is novel and although Reverend the Hon. Fred Nile has never seen it before. There must be many things that Reverend the Hon. Fred Nile has never seen before. I commend the amendment of the Hon. Richard Jones.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [8.40 p.m.]: There are two matters I have to clarify. First, with respect to the amendment of the Hon. Malcolm Jones, which is merely like a take-



note debate, irrespective of the outcomes of that take-note debate, no matter how outraged or upset we are, no matter how much we wish to change it, there is nothing we can do. We cannot do a thing once we have had the take-note debate.

The amendment of the Hon. Richard Jones provides exactly what so many members, including Reverend the Hon. Fred Nile, have been complaining about: the potential for a delay mechanism. The disallowance motion is a classic delay mechanism waiting to be activated. The guidelines and the rules of the commission would come back in the form of an instrument in the regulation, but if we do not like them we cannot amend them. We cannot be selective and amend one part and not the rest. A disallowance means that the entire regulation is disallowed.

If the regulation were disallowed, we have nothing left in its place. Therefore, what Reverend the Hon. Fred Nile suggests then comes to fruition: the whole system shuts down and goes into complete seizure because the Government does not have an alternative to its regulation. There is only one option for this Parliament and it is simple. The proposition put by the Coalition is one of due process to allow the Parliament to consider and debate the guidelines and the rules of the commission as soon as they are finished by the Government.

Parliament can resume next week or the week after to allow this matter to be debated. If it is so important, I will pick up Reverend the Hon. Fred Nile and bring him to the Parliament, but we will get it through so that at least the Parliament will have an opportunity to debate it. The Government does not want debate. It is trying to make the disallowance look good because it knows that at the end of the day there is no way the Parliament can block it because there is no alternative. The Government will accept the amendment of the Hon. Malcolm Jones because all that will be is a gab session.

**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) [8.43 p.m.]: I wish to respond to the comments of the Leader of the Opposition and other speakers. The tabling procedure proposed by the amendment for the rules of the commission is not considered appropriate. The alternative amendment proposed by the Hon. Malcolm Jones provides a more suitable means of ensuring parliamentary oversight for the rule-making process.

Reverend the Hon. Fred Nile accurately made the point that he has been in the Parliament 20 years, which is 10 times longer than I have been here, and he has never seen the Parliament approve the District Court Rules. If he says that is the case, I believe him, and probably we should not be doing so. There will be a need for detailed rules to be developed about the operation of the commission, including the operation of the medical panels. As is normally the case, these operational details will be developed as the framework for the commission and its operation is fleshed out. This is likely to take some time and will involve a staged implementation, with the commission taking on its full workload and developing these rules progressively.

Ministerial sign-off of this kind of detail is normal. I gave a number of examples previously about the rules of evidence of tribunals and similar arrangements that operate in this way, specifically executive sign-off of rules of tribunals and similar bodies. Section 35 of the Commission for Children and Young People Act, section 120 of the Fines Act relating to the operation of the State Debt Recovery Office, and section 646 of the Local Government Act all provide for ministerial sign-off of rules and guidelines. There is nothing unusual in this procedure.

Obviously, because of the sensitivity of this issue and because it is a new set of arrangements, I would be happy to support an amendment such as that of the Hon. Malcolm Jones, which ensures that the Parliament is able to respond in detail to the rules. The Leader of the Opposition had me under cross-examination. For the record I want to ensure that I recorded an accurate response. In answer to the question, "Can the commission commence its operations without the guidelines?", I would reply that obviously aspects of the expedited assessment service could proceed without the guidelines being in place. Therefore, parts of the bill could be put in place before the guidelines were available.

**The Hon. RICHARD JONES** [8.56 p.m.]: The Leader of the Opposition was dissembling. He said there was only one option, that is, to disallow, but it is a two-stage process. Disallowance does not happen immediately. Notice is given first and the next day there is a disallowance debate and then the debate can be adjourned to give the Government time to reassess the regulation and rewrite the regulation, if necessary. If the disallowance motion is kept on foot, the Government can replace it with another regulation. We have done that before and it puts pressure on the Government. By opposing the amendment the Opposition is putting at risk that which it seeks to gain.

**Question—That the amendment of the Hon. Richard Jones of the Opposition amendment be agreed to—put.**

**The Committee divided.**

**Ayes, 3**

Mr R. S. L. Jones  
*Tellers,*  
 Mr Breen  
 Dr Wong

**Noes, 29**

Ms Burnswoods	Mr Johnson	Ms Rhiannon
Dr Chesterfield-Evans	Mr M. I. Jones	Mr Ryan
Mr Cohen	Mr Lynn	Ms Saffin
Mr Della Bosca	Mr Macdonald	Ms Tebbutt
Ms Fazio	Mrs Nile	Mr Tingle
Mrs Forsythe	Reverend Nile	Mr Tsang
Mr Gallacher	Mr Obeid	Mr West
Miss Gardiner	Mr Oldfield	<i>Tellers,</i>
Mr Gay	Mr Pearce	Mr Moppett
Mr Harwin	Dr Pezzutti	Mr Primrose

**Question resolved in the negative.**

**Amendment of the Hon. Richard Jones of Opposition amendment negated.**

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

**The Committee divided.**

**Ayes, 15**

Mr Breen	Mr Gay	Miss Gardiner
Dr Chesterfield-Evans	Mr Harwin	
Mr Cohen	Mr Lynn	
Mrs Forsythe	Mr Pearce	<i>Tellers,</i>
Mr Gallacher	Dr Pezzutti	Mr Moppett
Miss Gardiner	Ms Rhiannon	Mr Ryan

**Noes, 18**

Dr Burgmann	Mr Macdonald	Mr Tsang
Ms Burnswoods	Mrs Nile	Mr West
Mr Della Bosca	Reverend Nile	
Ms Fazio	Mr Obeid	
Mr Johnson	Mr Oldfield	<i>Tellers,</i>
Mr M. I. Jones	Ms Tebbutt	Mr Primrose
Mr R. S. L. Jones	Mr Tingle	Ms Saffin

**Pairs**

Mr Colless	Mr Dyer
Mr Jobling	Mr Egan
Mr Samios	Mr Hatzistergos

**Question resolved in the negative.**

**Amendment of amendment negated.**

**Question—That the amendment be agreed to—put.****The Committee divided.****Ayes, 23**

Mr Breen	Mr Macdonald	Mr Tsang
Dr Burgmann	Mrs Nile	Mr West
Ms Burnswoods	Reverend Nile	Dr Wong
Mr Cohen	Mr Obeid	
Mr Della Bosca	Mr Oldfield	
Ms Fazio	Ms Rhiannon	
Mr Johnson	Ms Saffin	<i>Tellers,</i>
Mr M. I. Jones	Ms Tebbutt	Dr Chesterfield-Evans
Mr R. S. L. Jones	Mr Tingle	Mr Primrose

**Noes, 10**

Mrs Forsythe	Mr Harwin	<i>Tellers,</i>
Mr Gallacher	Mr Lynn	
Miss Gardiner	Mr Pearce	Mr Moppett
Mr Gay	Dr Pezzutti	Mr Ryan

**Question resolved in the affirmative.****Amendment agreed to.**

**The Hon. IAN COHEN** [9.03 p.m.], by leave: I move Greens amendments Nos 100 and 101 in globo:

No. 100 Page 93, schedule 4.2 [16], proposed section 365 (1), line 33. Insert "recorded and" after "to be".

No. 101 Page 93, schedule 4.2 [16], proposed section 365. Insert after line 34:

- (2) The record of the decisions and determinations is to be indexed and is to be available for public search.

These amendments would cause the commission to maintain records of all decisions that are indexed and available to be searched by the public. This is important in order to ensure transparency, public accountability, repeatability and reproducibility. It would also encourage procedural fairness among all parties. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [9.03 p.m.]: Greens amendments Nos 100 and 101 require decisions of the commission to be recorded and made available for public search. The Government believes the existing provisions of the bill are adequate in this regard, and therefore opposes the amendments.

**Amendments negatived.**

**The Hon. PETER BREEN** [9.03 p.m.]: In view of the failure of my previous amendments along the same lines, I do not move my amendments Nos 16, 17 and 18 as circulated.

**The Hon. IAN COHEN** [9.03 p.m.], by leave: I move Greens amendments Nos 102, 103 and 104 in globo:

No. 102 Page 94, schedule 4.2 [16], proposed section 367 (1) (a), line 20. Omit "and cost effective".

No. 103 Page 94, schedule 4.2 [16], proposed section 367 (1) (b), lines 23 and 24. Omit all words on those lines.

No. 104 Page 95, schedule 4.2 [16], proposed section 367 (2), lines 8 and 9. Omit all words on those lines.

New section 367 gives the commission objectives that include a cost-effective system for resolving disputes and reducing administrative costs. The amendments would remove those two objectives and the commission's obligation to have regard to the remaining objectives. The Greens believe these objectives would bias the commission against the rights of workers. We believe it is completely inappropriate to bind the commission to objectives that run counter to the basic rights of injured workers. I commend Greens amendments Nos 102, 103 and 104 to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [9.05 p.m.]: Greens amendment No. 102 would remove cost effectiveness from the objectives of the new Workers Compensation Commission. The bill, as drafted, requires the commission to provide a fair and cost-effective system, which is an entirely sensible objective. It is no good the commission's providing a fair system if it is inefficient and unaffordable. Equally, it would be wrong for the system to be cheap but not fair. The commission must be both fair and cost effective. Therefore, the Government opposes this amendment.

Greens amendment No. 103 removes from the new Workers Compensation Commission the objective of reducing administrative costs across the workers compensation system. The commission is part of a system and, together with all other parties to the system, must accept accountability for its administrative costs. Simply saying that the commission will provide a service, regardless of the administrative cost, is a luxury that the system cannot afford. Therefore, the Government opposes this amendment.

Greens amendment No. 104 is an interesting amendment. The Greens would have us set objectives for the new Workers Compensation Commission but remove any obligation on the commission to pay regard to them. We set objectives in order to provide direction, and we expect the commission to aim to achieve its objectives. This amendment removes that obligation, and is therefore also opposed by the Government.

**Amendments negatived.**

**Ms LEE RHIANNON** [9.06 p.m.]: I move Greens amendment No. 105:

No. 105 Page 95, schedule 4.2 [16], proposed section 368 (1) (b), line 13. Omit "two". Insert instead "at least two".

This amendment would allow for the appointment of more than two deputy presidents to the commission, which would ensure that there is an adequate number of presidential officers to meet the expected caseload. This is a simple amendment, and we hope that the Government will support it.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [9.07 p.m.]: The number of deputy presidents of the commission provided for in the bill, together with the other features of the package, have been the subject of detailed examination and consultation—particularly with the Labor Council. The proposed amendment would allow an unlimited number of deputy presidents to be appointed rather than two, as is provided in the bill. The Government consequently opposes the amendment.

**Amendment negatived.**

**The Hon. IAN COHEN** [9.08 p.m.], by leave: I move Greens amendments Nos 106 and 111 in globo:

No. 106 Page 95, schedule 4.2 [16]. Insert after line 24:

**369 Commission in Court session**

The Commission in Court session is to be constituted by the President and is to consist of the President and at least one Deputy President.

No. 111 Page 97, schedule 4.2 [16], proposed section 375 (3), line 11. Insert "and is to sit in Court session" after "member".

These amendments cause appeals to presidential members of the commission against the decision of an arbitrator to be heard in Court Session that is constituted by the president and at least one deputy president. This will protect the rights of injured workers to procedural fairness and ensure that the workers are not disadvantaged at the appeal stage. It recognises that appeals should be determined by more than one presidential officer, as is the practice in other equivalent jurisdictions. This reflects the division of responsibility under the Industrial Relations Act upon which this bill is modelled. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [9.10 p.m.]: Amendment No. 106 would require a panel, including the president and at least one deputy president, to review the decision of the arbitrator. The provision as written provides for independent review by a judge of a court of record. There is a similar review process of arbitrators' decisions in the District Court. The amendment would increase costs and delays. It is unnecessary and is therefore opposed. Amendment No. 111 would introduce unnecessary formality and inflexibility in the process. There are numerous examples of a tribunal not sitting as courts in session, for example, the Administrative Appeals Tribunal, the Residential Tenancies Tribunal and so forth. The amendment is consequently opposed.

**Amendments negatived.**

**The Hon. PETER BREEN** [9.10 p.m.]: I move Reform the Legal System amendment No. 19:

No. 19 Pages 95 and 96, schedule 4.2 [16], proposed section 369, line 28 on page 95 to line 5 on page 96. Omit all words on those lines. Insert instead:

- (2) A person is eligible to be appointed as Deputy President only if the person:
  - (a) is or has been a judicial officer (within the meaning of the *Judicial Officers Act 1986*, or
  - (b) is a legal practitioner of at least 7 years' standing.
- (3) A person is eligible to be appointed as the Registrar or as an Arbitrator only if the person is a legal practitioner who has held, for at least 7 years, a practising certificate issued by the Bar Council or Law Society Council.

The purpose of this provision is to specify the qualifications for a legal practitioner. As the provision presently stands, a legal practitioner of at least five years standing is eligible to be appointed as deputy president, but there is no suggestion in that provision as to whether the legal practitioner needs to have the relevant experience. There are many educational institutions in New South Wales that have degree courses in law, and many of the people who attend those courses and complete them would regard themselves as legal practitioners. Earlier the Minister indicated that he is extremely anxious to keep not only judicial officers, but legal practitioners as well, out of the new system. That provision is wider than the Minister could have contemplated.

The Minister would be aware that a person is not really a legal practitioner until he or she has had some practice. Some legal practitioners have qualifications and are issued practising certificates from the Bar Association and the Law Society. The people who qualify for those certificates have to achieve a certain standard of practice and experience before they are able to practise, to appear in court for example, and to advise on certain questions of law. My amendment is about the most reasonable the thing I have done all night. Whatever the Minister thinks about legal practitioners—and it may not be much—if he wants legal practitioners in the commission he ought to make sure they are properly qualified. On that basis I commend my amendment to the Committee.

**The CHAIRMAN:** Before putting the question on the amendment of the Hon. Peter Breen the Committee will consider also Greens amendment No. 107.

**Ms LEE RHIANNON** [9.13 p.m.]: I move Greens amendment No. 107:

No. 107 Pages 95 and 96, schedule 4.2 [16], proposed section 369, line 28 on page 95 to line 5 on page 96. Omit all words on those lines. Insert instead:

- (2) A person is eligible to be appointed as Deputy President only if the person:
  - (a) is or has been a judicial officer (within the meaning of the *Judicial Officers Act 1986*), or
  - (b) is a legal practitioner of at least 5 years standing.

This amendment ensures that the registrars of the commission have been legal practitioners and that deputy presidents have been legal practitioners of at least five years' standing or have been judicial officers of other courts before appointment. The deputy presidents will be determining peoples' legal rights. Without appropriate qualifications and experience, they will be unable to protect the rights of those appearing before them. Much of what they would deal with will involve complicated legal issues.

The failure of the Workers Compensation Resolution Service to produce meaningful results suggests that personnel without appropriate legal qualifications and experience should not be used in those positions. As honourable members know, my original amendment included a requirement that arbitrators be legally qualified. I appreciate the discussions we had with the Parliamentary Secretary and the Leader of the Opposition, who pointed out that those measures were not necessary, and that is why the Greens have moved this amendment.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [9.14 p.m.]: The Government opposes Reform the Legal System amendment No. 19. The bill already includes provisions requiring the commission members generally to be legally qualified and to have the period of experience required for appointment as a deputy president. Those provisions have been arrived at following extensive consultations on the Government's original bill. The amendment seeks to impose additional requirements for appointment in terms of years of experience required. The provisions of the bill are reasonable. However, the Government will support Greens amendment No 107. The Government is of the view that the registrar and arbitrator do not need to be legal

practitioners of at least seven years standing. Those roles do not require the heavy and onerous requirements relating to legal practitioners holding a practising certificate from the Bar Association and the Law Society.

**The Hon. Peter Breen:** I seek clarification. The procedure on this vote seems to be different to all other procedures this evening. On other votes there has been one issue discussed at a time. It seems to me on this occasion that I moved my amendment and, for some reason about which I am not clear, Ms Lee Rhiannon moved her amendment.

**The Hon. IAN MACDONALD:** It is the same issue.

**The Hon. Peter Breen:** Is it not the case that we have had other votes tonight when the same issue has been involved and the amendments have been moved separately?

**The CHAIRMAN:** It depends on the amendment. Sometimes amendments conflict and if one is agreed to the other cannot be moved. Sometimes, as in this particular case, amendments relate to the same issue so they should both be moved. I intend to put the question on your amendment first and then the question on the amendment of Ms Lee Rhiannon.

**Amendment of the Hon. Peter Breen negatived.**

**Amendment of Ms Lee Rhiannon agreed to.**

**The Hon. PETER BREEN** [9.16 p.m.]: I do not move Reform the Legal System amendment No. 20 as circulated.

**The Hon. IAN COHEN** [9.16 p.m.]: I do not move Greens amendment No. 110 as circulated. By leave, I move Greens amendments Nos 112 and 113 in globo:

No. 112 Page 97, schedule 4.2 [16], proposed section 37691), line 14. Omit "Authority". Insert instead "Minister".

No. 113 Page 97, schedule 4.2 [16], proposed section 376 (3), lines 25 -28. Omit all words on those lines. Insert instead:

(3) The Minister may amend, revoke or replace WorkCover Guidelines.

These amendments ensure that the guidelines are issued by the Minister rather than as is proposed: a mixture of responsibility between the Minister and WorkCover. The dilution of responsibility in the bill will lead to analyst finger-pointing and lack of clarity. The amendment ensures that the Minister takes responsibility for problems with the guidelines. This is appropriate as the Minister is responsible to the Parliament and ultimately to the voters of New South Wales. This amendment creates political accountability and removes the ability of the Minister to hide behind WorkCover. I commend the amendments to the Committee.

**Amendments negatived.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [9.20 p.m.]: I move Australian Democrats amendment No. 20:

No. 20 Page 98, schedule 4.2 [16]. Insert after line 21:

**378 Support for Injuries Australia**

It is the intention of Parliament that the Authority is to provide support (including financial support) to Injuries Australia in the exercise by it of the following functions:

- (a) education of workers about the workers compensation scheme,
- (b) advocacy for the interests of individual workers, or workers in general, in relation to the operation and future directions of the workers compensation scheme.

This sensible amendment was thoughtfully conceived. Basically it is a blow for equity in the system. In New South Wales 75 per cent of workers are not union members. The members of the small amateur groups that represent injured workers are themselves injured workers, many of whom were unionists and found support from each other as a community group. They possess much knowledge and need to acquire the ability for advocacy. Part of their lobbying on this legislation included unequivocal letters on the issue: Bill Western of Injuries Australia begged us to try to get this legislation changed. I note there is empowering legislation that

provides for grants to advisory groups, but I was disappointed to hear the Minister earlier today talk about giving grants to employers and unions when the bill refers to employer and employee organisations. Although injured worker organisations are no longer employee organisations, they were at the time their members were injured and those members now are trying again to become employees. Injuries Australia is an incorporated body and qualifies as an advisory group.

**The Hon. John Della Bosca:** They get a lot of funding from the Law Society.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Some money may have been provided to it for advertising as a co-operative effort. The fact of the matter is that an advocacy body is necessary. The Minister will be aware of the controversy surrounding attempts to remove money from advocacy bodies in the disabled sector. Indeed, systemic advocacy and understanding is as important as individual advocacy, but under this new commission system those individuals in the 75 per cent of workers who are not unionised will literally have no solicitors to turn to for guidance. It is my understanding that agents will be union members and employers. However, unions generally are less enthusiastic about helping non-union members even before they were injured! I suppose that is understandable. Injuries Australia could do a lot of good, and I ask the Minister to consider involving it.

**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) [9.24 p.m.]: WorkCover Authority's functions already include educating workers about rights and obligations under the legislation. In addition, the bill includes provision for transitional funding for claims assistance purposes for a three-year period for organisations representing employees or employers. It is generally considered that unions are more likely to have continuing contact with workers to make claims advisory services applicable. Assistance for other groups could be considered by WorkCover but would have to prove to be appropriate. The Government recognises the concerns that injured workers should be represented in discussions, but it is difficult to see why one particular group should be singled out in the legislation.

**Amendment negatived.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [9.25 p.m.]: I seek leave to move Australian Democrats amendment No. 21.

**The CHAIRMAN:** Order! Australian Democrats amendment No. 21 is outside the leave of the bill and therefore cannot be moved.

**The Hon. PETER BREEN** [9.26 p.m.]: I do not move my amendment No. 21.

**Ms LEE RHIANNON** [9.26 p.m.], by leave: I move Greens amendments Nos 114, 115, 116 and 117 in globo:

No. 114 Pages 98 and 99, schedule 4.2 [17], proposed schedule 5, line 27 on page 98 to line 2 on page 99. Omit all words on those lines. Insert instead:

**1 Application**

Clauses 2, 4 and 6 apply only to members of the Commission who are not Presidential members.

No. 115 Page 99, schedule 4.2 [17], proposed schedule 5, lines 7-9. Omit all words on those lines. Insert instead:

(2) The term of an appointment must not exceed 5 years.

No. 116 Page 99, schedule 4.2 [17], proposed schedule 5, lines 21-29. Omit all words on those lines. Insert instead:

**5 Remuneration of Presidential members**

The remuneration of a Presidential member is to be determined under the *Statutory and Other Offices Remuneration Act 1975*.

No. 117 Page 104, schedule 4. Insert before line 1:

**4.4 Constitution Act 1902 No 32**

**[1] Section 52 Definition and application**

Insert after section 52 (1) (e):

(e1) President or Deputy President of the Workers Compensation Commission,

[2] **Section 52 (2)(b)**

Insert ", the Workers Compensation Commission in court session" after "District Court".

**4.6 Judges' Pensions Act 1953 No 41**

**Section 3 Definitions**

Insert "President or Deputy President of the Workers Compensation Commission of New South Wales" after "Judge of the District Court," in the definition of **Judge** in section 3 (1).

**4.7 Judicial Officers Act 1986 No 100**

[1] **Section 3 Definitions**

Insert after paragraph (e) of the definition of **judicial officer** in section 3 (1):

(e1) a Presidential member of the Workers Compensation Commission, or

[2] **Section 3 (4)**

Omit the subsection. Insert instead:

(4) In this Act, a reference to the Industrial Commission, the Workers Compensation Commission or the Compensation Court is a reference to the Industrial Commission of New South Wales, the Workers Compensation Commission of New South Wales or the Compensation Court of New South Wales.

[3] **Section 3 (5)**

Insert after section 3 (5) (b):

(b1) the President of the Workers Compensation Commission, in relation to a member of that Commission,

[4] **Section 5 The Commission**

Omit subsection 5 (3). Insert instead:

(3) The Commission is to consist of 11 members, of whom :

(a) 7 are official members, and

(b) 4 are appointed members, who are to be appointed by the Governor on the nomination of the Minister.

[5] **Section 5 (4)**

Insert after section 5 (4) (e):

(e1) the President of the Workers Compensation Commission,

[6] **Schedule 2 Provisions relating to the procedure of the Commission**

Omit "7 members" from clause 3 (Quorum) of Schedule 2. Insert instead "8 members".

**4.8 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

**Schedule 1 Public offices**

Insert at the end of Schedule 1:

President of the Workers Compensation Commission of New South Wales

Deputy President of the Workers Compensation Commission of New South Wales.

These amendments alter the terms of appointment of the presidential and deputy presidential members to equal those of Supreme Court and District Court judges respectively pursuant to section 44 (1) of the Judicial Officers Act 1986. The amendment will include "president" and "deputy president" of the Workers Compensation Commission in the definition of "judicial officer". The purpose of the amendment is to ensure that workers get a fair hearing and are not subject to the bias of judicial officers trying to maintain favour for their future reappointment. The tenure of judicial appointees is central to the protection of their independence from government interference. This is a key component in the way our society has remained an independent and fair-minded judiciary.



The Minister and the Premier are choosing a new direction based on commission officers being beholden to the Government for their continued employment. The Greens argue that only an independent court-like commission can protect the rights of those who appear before it: this is basic to the way this society has managed itself for the last several centuries. However, it appears that the management of WorkCover, the Minister and his staff, and the Carr Labor Government reject this idea. I commend the amendments to honourable members. We will listen with interest to the Government's response but I believe, unfortunately, I know what that response will be.

**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) [9.28 p.m.]: I tend to think big, and at one stage I thought, given the gravity of the obligations and status attributed to presidential members by the amendment of Ms Lee Rhiannon, it would be appropriate for the Government to support the amendment. However, after thinking this through and after all the negotiations and discussions on this bill, I believe that the amendment overstates the case—requiring that the president be a Supreme Court judge. That does not mean a Supreme Court judge could not be appointed to the presidency of the commission, but generally it is accepted under the current arrangements that the president effectively have the status of a District Court judge and that deputy presidential officers will be eligible to be appointed as judges as they will be legal practitioners with five years standing—otherwise they will be appointed for a fixed period of time.

There appears to be a view that appointees could be of such weak character that towards the end of their tenure period they would make decisions based on fear. As has been made clear repeatedly, the model required to give effect to this commission, devised during consultations with the trade union movement, is based on the notion of the Administrative Decisions Tribunal. The Government has continued to honour that in the drafting of the detail of the bill. I cannot accept Ms Lee Rhiannon's amendments in spite of the spirited way in which she argued her case. These are big decisions, but the provisions already in the bill will give effect to the appropriate protections required.

**Reverend the Hon. FRED NILE** [9.30 p.m.]: I know from our lobbying by union members that they think arbitrators would be mindful of their future careers if their decisions would offend the Government in some way. This is the fear that has been conveyed to us. The arbitrators are not appointed at a judicial level, and therefore on expiry of their tenure period would not go on to be judges elsewhere. Would the Government, without giving a blanket answer right now, consider some means by which individual arbitrators who complete their term with the commission could be considered for service on other tribunals? I do not mean as a judge, but perhaps for appointment to positions on tribunals such as equal opportunity tribunals and anti-discrimination tribunals, which are at a level similar to that of arbitrators. Would the Government give consideration to considering such appointments when arbitrators have finished their terms?

**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) [9.31 p.m.]: Yes.

#### **Amendments negated.**

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [9.32 p.m.], by leave: I move Opposition amendments Nos 13 and 14 in globo:

No. 13 Page 100, schedule 4.2 [17], proposed schedule 5, lines 24 and 25. Omit "(other than an Arbitrator)".

No. 14 Page 100, schedule 4.2 [17], proposed schedule 5, lines 27 and 28. Omit all words on those lines.

If these Opposition amendments are successful, the Minister will be able to remove a member of the commission from office for incapacity, incompetence or misbehaviour. The bill provides that the president may at any time remove an arbitrator from office. The rationale behind amendment No. 14 is that an arbitrator be given some form of protection of tenure. Proposed clause 6 (3) provides that the president may at any time remove an arbitrator from office, without any requirement to show cause for such an action. As has been said earlier, an arbitrator who for whatever reason fell from favour could easily be dismissed under the bill as it currently stands, without the president having to show cause for the dismissal. The two Opposition amendments rectify that anomaly fairly neatly. The Opposition amendments would permit the Minister to remove any member of the commission for incapacity, incompetence or misbehaviour.

**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) [9.34 p.m.]: The Opposition amendments would transfer from the president of the commission to the Minister the power to remove arbitrators from office. The provision in the bill, which has been subject to detailed consultation, is regarded as the appropriate and correct way to proceed. In fact, the amendments would be internally contradictory of some of the protections built into the bill which prevent ministerial, or for that matter bureaucratic, intervention in the affairs of the commission. In some respects, these Opposition amendments could be said to be a backward step from the original package of amendments that the Coalition indicated it supported.

The power to remove arbitrators vested in the president addresses the very concern that primary decision-makers be free from direct or indirect government influence or any perceived threat to their continuance as arbitrators. It is important that the Committee be aware that arbitrators will not necessarily be full-time appointees. They will be appointed under a process which it is envisaged will involve the president consulting with the relevant professional bodies from which the arbitrators will be drawn as well as the stakeholders in the system, the employers and unions. The obvious professional bodies are the Bar Association and Law Society. We envisage that the arbitrators will not be directly or even indirectly appointable by the Minister. We believe the Coalition amendments would be a backward step in that the relative independence of presidential officers of the commission and the internal operations of the commission flowing from their being seen to be free from direct intervention would be compromised by adoption of the Coalition amendments.

#### **Amendments negated.**

#### **Postponed consideration of Opposition amendment No. 4**

**The CHAIRMAN:** Order! There are two amendments for resubmission, one of which is Opposition amendment No. 4. The Hon. Malcolm Jones moved an amendment to Opposition amendment No. 4 to include some time frames, in other words, to include the words "such a report is to be made in respect of each six month period ending on 30 June and 31 December in a year starting with the six month period ending on 31 December 2001."

**The Hon. JENNIFER GARDINER** [9.40 p.m.]: I move a further amendment to Opposition amendment No. 4:

At the end of (1A) (b) add the words "from the authority".

My amended subsection (1A) (b) would then read "of actuarial or financial advice in connection with the workers compensation scheme received by the Council from the authority."

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [9.41 p.m.]: It is hoped that the amendment moved by the Hon. Jennifer Gardiner will assist with the information sought from Reverend the Hon. Fred Nile, who was concerned that every little piece of paper, every little piece of advice that was given by anyone to the council, would fall within the purview of this amendment. The Hon. Jennifer Gardiner rightfully moved to clarify the situation, as requested by Reverend the Hon. Fred Nile, to specify exactly what is required. It would therefore read:

Actuarial or financial advice in connection with the workers compensation scheme received by the Council from the authority.

**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) [9.41 p.m.]: I appreciate the fact that the Leader of the Opposition has been prepared to consider an approach that would accommodate some of the concerns of the Government and other members of this Chamber who indicated their concerns earlier. The Government is not prepared to accept even the amended proposition because we know that the Independent Pricing and Regulatory Tribunal overview and the General Purpose Standing Committee No. 1 overview will be able to get all sorts of information that the Advisory Council would get from WorkCover. I had not thought about it until I thought the matter through, but the committee would have access to all the materials the Advisory Council would otherwise have. The Opposition has attempted to be helpful by amending its proposition, but the Government continues to believe that the amendment should not be supported.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [9.43 p.m.]: The comments made earlier by the Hon. John Della Bosca giving the Chamber an assurance that the committee would have access to all of the records of the Advisory Council in relation to this amendment satisfy my concerns. I am more than happy to withdraw the amendment.

**Opposition amendment No. 4, by leave, withdrawn.**

**Amendment of the Hon. Malcolm Jones of the amendment, by leave, withdrawn.**

**Amendment of the Hon. Jennifer Gardiner of the amendment, by leave, withdrawn.**

**Schedule 4 as amended agreed to.**

## **Schedule 5**

**The Hon. MALCOLM JONES** [9.45 p.m.]: I move Outdoor Recreation Party amendment No. 3:

No. 3 Page 105, schedule 5.1. Insert after line 3:

[1] **Section 10 Journey claims**

Omit section 10 (3)-(6). Insert instead:

- (3) This section applies to a journey that is undertaken by the worker in connection with the worker's employment, being a journey that the worker is required by the terms of the worker's employment, or expected by the worker's employer, to undertake.

In my contribution to the second reading debate I flagged that I would move amendments relating to journey claims, much to the consternation of everyone opposite me—they were horrified at the thought—and notwithstanding all the comments about how journey claims have been with us for a long time and they have been a political football for the past 20 years. Workers should be covered, especially when they are on the business of their employer, and they should enjoy the full benefits of workers compensation. However, journey claims have, and will continue to be, the source of, for want of a better phrase, a bludge on compo. If an employee goes to the pub every day on the way home, as many do, it becomes the normal journey home. Until the employee gets home that person is covered by workers compensation. Therefore responsibility falls to the employer to pay premiums for such journey claims.

If an employee falls under a bus at 11.30 on Friday night he or she is covered by workers compensation, which is technically the responsibility of the employer. It is not fair. A proper extension of liability should be stopped. The Act contains a 0.5 exclusion from liability if a person is breathalysed. There is no time constraint on the journey home, which offers a broad potential for abuse of the spirit and the intent of the Act. Injured parties who are not drivers involved in accidents are rarely breathalysed. In the second reading debate, the fact that travellers have many types of redress other than workers compensation was discussed. Any form of mechanised transport should offer cover to travellers—third party motor vehicle insurance, et cetera. The amendment will provide substantial savings and will go some way towards removing the ability of cheats to claim workers compensation for private time injuries. I commend the amendment to the Committee.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [9.48 p.m.]: Journey claims are interesting: they are a little like fraud on the system. That has always been untested. There is some debate in the community regarding the impact of journey claims on the system. Some years ago when journey claims were restored by this Government because of the financial security of the scheme they were affordable. Eventually the reform passed through this place and became law. However, one needs to look at the rationale behind the reform: financial difficulties and the likelihood that this scheme could become an HIH disaster. There is concern not only in this place but in the community about the long-term viability of the scheme unless significant reforms are put in place.

As I said earlier, the Government introduced the concept of journey claims when this State was in a position to carry it financially. If the significant reforms that we are in the process of finalising tonight result in dire consequences for a system in difficulty, this issue should be put back on the drawing board for consideration. The State Government has done little, if anything, to examine this concept of journey claims and the impact that it has had on the scheme. Significant reforms have been introduced during the course of debate on this legislation. For those reason, the Opposition is prepared to support the amendment moved by the Hon. Malcolm Jones.

**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 [9.51 p.m.]: I suppose that I brought this upon myself by talking about this issue in

my response to the second reading debate and during debate in Committee. The amendment seeks to remove workers compensation coverage for injuries while travelling between home and work. Such a change is not acceptable to the Government. The Government restored that coverage in 1996 by removing restrictions which unjustly disqualified workers who were to any extent at fault. However, those 1996 amendments ensure that disqualification still applies if the journey injury is through the serious and wilful misconduct of the worker. Such misconduct is defined to include any case when a worker is under the influence of alcohol or drugs, unless he or she did not contribute in any way to the injury.

It is acknowledged that employers generally have less control over injuries on those journeys than over risk in the workplace itself. This consideration is recognised by the fact that journey claim costs are excluded from individual employers' premium assessments. The proposed amendment not only seeks to remove coverage on journeys between home and work; it also seeks to apply restrictions to injuries on journeys in the actual course of employment such as by truck and taxidriviers, police and so on. Specifically, the amendment would apply the misconduct disqualification that I have mentioned, including an alcohol and drug reference to those journeys in the course of employment. It is not appropriate to introduce such concepts of fault into coverage for injuries in the actual course of employment.

Among other things, such an approach would greatly add to litigation and legal costs within the system. The Government is also concerned that workers who are, for example, driving in the course of their employment, should not be affected by alcohol or drugs. However, the answer is not to introduce a new across-the-board disentitlement for workers compensation in those cases. Existing section 14 of the Workers Compensation Act 1987 already makes workers subject to disentitlement if it is proved that their injury is solely attributable to serious and wilful misconduct. Misconduct in that context has been held to include driving under the influence. The availability of that existing section is relevant in addressing the concerns behind the proposed amendment. The Government cannot support the amendment.

**Ms LEE RHIANNON** [9.53 p.m.]: The Greens do not support this amendment. The rights of workers are covered by workers compensation when they are travelling to work. That is most definitely a basic right. Opposition members should consider how long it has been a basic and hard-won right. This issue was first discussed in this Parliament in 1910. Perhaps the debate then was not dissimilar to the debate today. Perhaps the first workers compensation legislation was being drawn up and our forebears saw their way free to making that most important decision. As I said in debate last night, when we are considering workers compensation it is not our place to dismantle it; we must only maintain and strengthen it. The Greens believe that this amendment is most unnecessary. Though I found the debate interesting, there was no evidence of the massive rorts that were suggested. Workers compensation is a right. On the whole, it is a right that is not abused and it should remain.

**Reverend the Hon. FRED NILE** [9.54 p.m.]: It is legitimate to move an amendment in relation to this issue as it is provided for in the Act. But as there has been no debate, no submissions, no consultation and no warning that this issue would be raised, I do not believe that the amendment should be supported. At some future date, if there is a revision of the Workers Compensation Act, other matters could be considered. Tonight we are dealing with dispute resolution and we should focus on that issue.

#### **Amendment negatived.**

**The Hon. MALCOLM JONES** [9.55 p.m.]: I move Outdoor Recreation Party amendment No. 4:

No. 4 Page 105, schedule 5.1. Insert after line 3:

**[1] Section 10 Journey claims**

Omit ", unless, in the circumstances of the case, the risk of injury was not materially increased because of the interruption or deviation" from section 10 (2).

**[2] Section 10 (3) (a)**

Insert "by the most direct and reasonable route" after "employment".

This amendment also deals with journey claims, and it a compromise so far as I am concerned. Journey claims will be allowed by the most direct and reasonable route from the worker's home to employment, and not by the historic route, which I believe is a compromise. I am still unhappy about this issue but, once again, I commend this amendment to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [9.57 p.m.]: The amendment moved by the Hon. Malcolm Jones is unnecessary. Existing section 10 of the Workers Compensation Act, which deals with

coverage on journeys between home and work, already includes appropriate provision about coverage after detours or interruptions in such a journey. The proposed replacement of that provision with a new provision requiring use of the most direct route would open up new issues for dispute. There will be cases when workers will be reasonably required to travel on a particular occasion by a route that is not necessarily the most direct. An example would be when workers pool cars. Disentitlement to workers compensation should not be the result. The amendment is opposed.

**Amendment negatived.**

**The Hon. MALCOLM JONES** [9.57 p.m.]: I will not move Outdoor Recreation Party amendments Nos 5, 6 and 7.

**The Hon. RICHARD JONES** [9.58 p.m.], by leave: I move my amendments Nos 1 and 2 in globo:

No. 1 Page 107, schedule 5.2. Insert after line 22:

**[1] Section 29 Membership and procedure of Council**

Insert after section 29 (1) (j)

(k) 2 other persons appointed by the Minister.

No. 2 Page 109, schedule 5.2. Insert after line 10:

**[3] Schedule 2 Provisions relating to Council, clause 10 Quorum**

Omit "9 members". Insert instead "10 members".

It is recognised that the Workers Compensation and Workplace Occupational Health and Safety Council is designed as a stakeholder body. The Labor Council has the right to nominate five nominees, as do employer groups. Also represented on the council are a number of other service providers for the scheme, such as lawyers, medical practitioners, injury management specialists and occupational health and safety specialists. However, the current arrangements for the appointment of members to the council are unnecessarily restrictive. The Minister may not be getting the full range of advice that he should be getting from those that are users of the system. I have, therefore, moved these amendments to give the Minister discretion to appoint two additional members to the council. The amendment will ensure that the Minister receives the full range of advice that might be available in relation to workers compensation matters.

**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) [9.59 p.m.]: The Government supports both amendments.

**Amendments agreed to.**

**The Hon. DAVID OLDFIELD** [10.00 p.m.]: I move my amendment:

Page 108, schedule 5. Insert after line 2:

**[2] Section 230A Premium Discount Schemes**

Insert after section 230A (7):

(8) The Authority is to review the effectiveness of the first Premium Discount Scheme after the Scheme has been in operation for 12 months. The review is to include consideration of the introduction of no-claim bonuses.

This amendment relates to the miscellaneous aspects of the bill, most particularly the Government's initiative to provide a discount on workers compensation for businesses that have had their workplaces assessed as safe by occupational health and safety advisers accredited through WorkCover. The principal point of the amendment is to provide a situation where the result will be appropriate introduction of no-claim bonuses to workers compensation premiums. Workers compensation is a considerable financial burden on employers and thus far there has been absolutely no incentive in a form of reduction in premiums for those businesses that operate safely and hence experience little to no claims on the workers compensation scheme.

The Government's premium discount should be welcomed by employers as recognition of their creating a safe workplace, and equally it should be welcomed by employees who will be the beneficiaries of safer

working conditions. However, with regard to matters of financial incentives for employers, the premium discount is a diminishing scenario which after three years provides no incentive. A no claims proposition will provide a fair and ongoing incentive that recognises the achievements of accident-free workplaces. This amendment is the first and most significant step in allowing the introduction of no-claim premium bonuses, and hence lower cost to business through rewarding employers who are successfully establishing and continuing a record of safety.

My own extensive experience in small business has proved to me that good employers understand that when their business is doing well it is in part due to the competence, loyalty and productivity of their staff. Business should be considered as a venture embarked upon co-operatively by employers and employees. Business generally, and most particularly small business, is conducted by hard-working people who speculate, initiate and invest in their own skills and ideas. Good employees, who are treated well and have an understanding of the overall operations of the business for which they work—especially those employed by small businesses—appreciate the boss's investment and risk, and are cognisant of their responsibilities and place in the organisation.

Equally, these employees also have an expectation of being fairly compensated for their efforts. Smart employers understand the value of a loyal and content work force. Just as it is the responsibility of employers to provide the safest possible workplace, it is the responsibility of employees to utilise the provision of that safety to the maximum extent by taking care in the action of carrying out their duties. As I suggested a few moments ago, successful business is largely achieved through the efforts of owners-employers and staff. No-one succeeds without help and help is best fostered, not forced. I got out of small business in 1993 and the last business I owned has now been in operation for 19 years. During that time there has been only one worker's compensation claim—actually, I was the one who was injured.

In the scheme of things my injuries were not overly significant and I was only off work or on light duties for a couple of weeks. Only one claim in 19 years! One might get the impression that there was little opportunity for injury, but in fact that particular business was, and is, very diverse in its operations. At any one time there were up to 20 full-time and part-time employees, who not only worked in sales and administration, but drove boats and minibuses, serviced and repaired high-pressure equipment, and taught scuba diving and lifesaving in swimming pools and in the open ocean, often many kilometres offshore. Our staff conducted weekends away, driving hundreds of kilometres, and led groups of people on trips to foreign countries with very different practices to those we have in Australia.

In general, the nature of that business provided the potential for all manner of serious accidents, including those that would likely lead to death. Yet, in 19 years there was only one claim and a very minor claim at that. Despite the obvious potential dangers related to the majority of the activities undertaken by that business, accidents were almost non-existent because we were very concerned with staff safety, and our well-trained staff were very careful in the conduct of operations. It is understandable why businesses with very high levels of safety, and with unblemished or virtually unblemished safety records, are aggrieved at not having those efforts rewarded by initiatives such as that which would be provided by workers compensation premiums no-claims bonuses.

Some businesses are doing extremely well, but many are struggling. The pressure on most small business is perhaps worse than it has ever been and the further impost created by various aspects of the goods and services tax has only exacerbated matters. All levels of government should do their utmost, within their means, to assist employers and employees, and no-claim bonuses on workers compensation premiums is a perfect example of providing access to financial incentives by simply addressing an unfair situation. Some might consider that the unscrupulous would find this an incentive to avoid making claims even when accidents have occurred—though, of course, that is an extremely negative way of looking at what I proposed. It must always be taken into account that, just as no law is foolproof, there will never be a law that is dishonesty-proof either.

It is the positive aspects of this amendment that come to the fore, most notably financial incentives for business to create an accident-free workplace and, from that, a safer, more secure and productive working environment for employees. This amendment opens the way for fair and financial acknowledgment of the successful safety-related efforts of employers and employees alike. While this consideration of workers compensation premiums no-claim bonuses will occur 12 months after the introduction of the premium discount scheme, I ask that the Government agree to the consideration of the introduction of no-claim bonuses also being included in the terms of reference of General Purpose Standing Committee No. 1 so that that committee may

take relevant public submissions and reach conclusions that will benefit the outcome of the consultative process. Do I have the Minister's agreement on that?

**The Hon. JOHN DELLA BOSCA:** Yes.

**The Hon. DAVID OLDFIELD:** I acknowledge the Government's agreement to including terms of reference regarding no-claim bonuses within the terms of General Purpose Standing Committee No. 1.

**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) [10.06 p.m.]: The Government has no objection to the amendment. The honourable member has indicated that he would like General Purpose Standing Committee No. 1 in its inquiry to consider the way in which no-claim bonuses may operate as a feature of the WorkCover scheme. I am a little sceptical as to how that could happen, but I think this is an occasion where, in the issue of scheme design, we have to embrace all new ideas. Although, I might say I need to guard my words because recently I have been sadly misquoted—not by anyone in this Chamber, but by a member of the media with respect to views on scheme design. That is something I would rather not have happen again in a short space of time. The Government agrees that the premium discount scheme is an innovative approach to the calculation of premiums in the WorkCover arrangements. Therefore, the Government is happy to have it subject to careful scrutiny to see how it settles in as a feature of the WorkCover scheme.

**Reverend the Hon. FRED NILE** [10.08 p.m.]: The Christian Democratic Party supports the amendment and the additional wording referring this matter to General Purpose Standing Committee No. 1. The amendment seeks a review; it does not change the bill. I think it is important in looking at the whole of WorkCover, the premiums and so on, that every aspect should be examined with a view to how we might reduce premiums and reward certain employers and employees who have a good safety record and few or no claims. I think it is a good feature. There may be other aspects that will be examined by General Purpose Standing Committee No. 1, as suggestions are received from the unions, employers and others.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [10.10 p.m.]: As I said in my contribution to the second reading debate, the premiums and their non-review have been problems in the past. Obviously, they have to be kept up to date. In relation to no-claim bonuses, if a single claim makes a difference to the premium occasionally there is pressure on people not to make a claim. That has to be looked at. However, it is desirable to have a lower premium and that is an incentive to employers, as long as that understanding exists.

**Amendment agreed to.**

**Schedule 5 as amended agreed to.**

**Schedule 6 agreed to.**

## **Postponed clause 2**

### **Consideration of postponed Reform the Legal System amendment No. 1**

**The Hon. PETER BREEN** [10.10 p.m.]: I move Reform the Legal System amendment No. 1:

No. 1 Page 2, clause 2 (3), lines 10-15. Omit all words on those lines.

This amendment seeks to delete schedule 3, which refers to guidelines and the degree of permanent impairment not being part of the bill. Much has been said about both of these issues and there is nothing further I can add, except to express my personal concern that if they are not specified we will know about them at some stage. They should be part of the bill. I commend my amendment.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [10.11 p.m.]: The amendment would remove the provision of the bill that prevents proclamation of schedule 3, which deals with compensation for permanent impairment until impairment guidelines have been made. This is related to the honourable member's main proposal that the schedule be removed. The provisions of the bill that will introduce compensation for permanent impairment are among the central features of this package. They will now promote objective assessment of lump sum benefits and, accordingly, reduce costly disputation. The provision that will delay proclamation of those provisions until guidelines are made is the result of significant consultation with the Labor Council. The Government opposes the amendment.

**Amendment negatived.**

**Clause 2 agreed to.**

**Title agreed to.**

**Bill reported from Committee with amendments.**

### **Adoption of Report**

**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) [10.12 p.m.]: I move:

That the report be now adopted.

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

That the question be amended by omitting all words after "That" and inserting instead "this bill be now recommitted with a view to further consideration of schedule 4."

**Motion as amended agreed to.**

### **In Committee (Recommittal)**

#### **Recommitted schedule 4**

**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) [10.13 p.m.]: I move:

Pages 82 and 83, schedule 4.2 [16], as amended in committee. Insert before line 14 on page 83:

#### **344 Liability of legal practitioner for client's costs in certain cases**

- (1) The Commission may, at any stage of a matter, make one or more of the following orders in respect of a legal practitioner whose serious neglect, serious incompetence or serious misconduct delays, or contributes to delaying, the matter:
  - (a) an order disallowing the whole or any part of the costs between the legal practitioner and his or her client,
  - (b) an order directing the legal practitioner to repay to his or her client the whole or any part of the costs that the client has been ordered to pay to any other party,
  - (c) an order directing the legal practitioner to indemnify any party other than his or her client against the whole or any part of the costs payable by the party indemnified.
- (2) The Commission may refer a matter to a costs assessor for inquiry and report before making such an order.
- (3) The Commission may order that notice of such an order against a legal practitioner is to be given to the legal practitioner's client in a specified manner.
- (4) A legal practitioner is not entitled to demand, recover or accept from his or her client any part of the amount for which the legal practitioner is directed by the Commission to indemnify a party pursuant to such an order.
- (5) This section does not limit any other provision of this Part.

#### **345 Costs penalties where appeal unsuccessful**

- (1) On an appeal from the Commission constituted by an Arbitrator to the Commission constituted by a Presidential member:
  - (a) if the appellant is the claimant and is unsuccessful on the appeal, the Commission must not make an order for the payment of the appellant's costs on the appeal by any other party to the appeal, or
  - (b) if the appellant is an insurer (other than a licensed insurer that maintains a statutory fund under the 1987 Act) and is unsuccessful on the appeal, the Commission may order the insurer to pay to the Authority for payment into the WorkCover Authority Fund an administration fee of \$1,000 or such other amount as may be prescribed by the regulations.



- (2) If the appellant in any such appeal is a licensed insurer that maintains a statutory fund under the 1987 Act and is unsuccessful on the appeal:
  - (a) the insurer's costs on the appeal, and
  - (b) the costs of any other party to the appeal that the insurer is ordered to pay, are not to be paid out of the statutory fund.
- (3) If an appeal concerns lump sum compensation, weekly payments of compensation or medical expenses compensation, the appellant is considered to be unsuccessful on the appeal unless the decision on appeal results in a change in favour of the appellant in the amount awarded or ordered to be paid in the decision appealed against of at least \$5,000 (or such other amount as may be prescribed by the regulations) and at least 20% of the amount awarded or ordered to be paid.
- (4) An administration fee that an insurer is ordered to pay is recoverable as a debt due to the Authority.
- (5) The Registrar is to notify the Authority of an order to an insurer under this section to pay an administration fee.

The amendment seeks to replace in the bill before the Committee the provisions involving clauses 344 and 345 of the original bill. These provisions relate to the liability of legal practitioners for clients' costs in certain cases and the appropriate cost penalties where appeals are unsuccessful. The proposed cost penalties contained in section 345 are central to the reform package. If this amendment is not agreed to matters will be routinely appealed to presidential members. Other arbitration systems that provide for reviews include such provisions. For example, in arbitrations in the District Court parties are required to do significantly better on appeal otherwise they are required to pay the costs of arbitration. This amendment will ensure that significant issues can be appealed, and without this provision parties will be entitled to two full hearings. Who benefits from this the most? I make it clear what will happen if the amendment is not accepted.

Legal costs will certainly increase beyond what is anticipated in the new commission and many of the impacts these reforms will have on the deficit may be lost. There is a big risk that not agreeing to this amendment could cause the scheme to go backwards. The amendment complements Government amendments Nos 1 to 4, which ensure that cost penalties apply equally to insurers' and workers' solicitors. I make clear a number of issues that have become confused during the Committee's consideration of these provisions. They relate to the ongoing consultation that has been occurring between the Government, trade unions and employer organisations during the 12-week consultation period about the dispute resolution package. The most important point that needs to be understood about that consultation period with respect to this set of provisions is that there emerged—I shall describe the situation after the events of Tuesday 19 June—a consensus between the Government, trade unions and employer stakeholders, that there should be a cost penalty in relation to this matter and that it was appropriate in certain cases that legal practitioners be liable for those costs.

This matter is not taken lightly by the Government. Within the consensus there was only one difference of opinion, and that was teased out at great length. That was whether both of the penalties should apply—that is \$5,000 and 20 per cent of the amount awarded—or \$5,000 or 20 per cent. The Government wishes to persist with both because they cover two different sets of circumstances. One is to prevent relatively insignificant matters being repetitiously appealed; the other is to make sure that appellants are seeking to improve their awards by more than 20 per cent. In other words, that would apply no matter how large the awards were—whether someone was trying to improve an award for \$10,000 by a few thousand dollars or whether someone was seeking an improvement of, say, \$50,000, \$60,000 or \$80,000 of an award for a very serious injury. It is important that both tests exist.

One of the remaining differences between the Government and the trade union movement is that the trade union movement had indicated a preference for one or the other. The Government persists with the view that both are essential to make the new scheme operate efficiently as envisioned by the legislation and the reform process we have gone through. I hope that explains to the Committee, in as much detail as required, our support for the original Government propositions which now become amendments on recommitment. We also make it clear that the same penalties will apply to defendants in parallel situations.

**The Hon. Dr PETER WONG** [10.20 p.m.]: I also have spoken to the trade union movement. It is concerned that the Government is not protecting workers rights and is unwilling to make even a small concession in this matter. I will therefore move an amendment. New section 345 (2) presently reads:

If an appeal concerns lump sum compensation, weekly payments of compensation or medical expenses compensation, the appellant is considered to be unsuccessful on the appeal unless the decision on appeal results in a change in favour of the appellant in the amount awarded or ordered to be paid in the decision appealed against of at least \$5,000 (or such other amount as may be prescribed by the regulations) and at least 20% of that amount.

I move:

Page 83, schedule 4, line 7. Delete the words "and at least 20% of that amount". Insert instead "or 20%, whichever is greater".

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [10.22 p.m.]: Had the amendment been moved by the Government, as was proposed, I would have moved the following amendment, which I now move:

Page 83, schedule 4, line 1. Delete subsection (2).

The Government proposes that new section 345 (2) read:

If the appellant in any such appeal is a licensed insurer that maintains a statutory fund under the 1987 Act and is unsuccessful on the appeal:

- (a) the insurer's costs on the appeal, and
- (b) the costs of any other party to the appeal that the insurer is ordered to pay,

are not to be paid out of the statutory fund.

This identifies what the Opposition has been saying with regard to the difficulties with the workers compensation scheme insofar as the ownership of the scheme is concerned. The insurers are being asked by many employers, who are becoming incredibly frustrated that they are not being heard, to fight on their behalf. As I said earlier, insurers are not really managers of the fund; they are merely the processors of the fund, a government fund. They receive a fee for doing the Government's legwork. On the one hand employers are saying that they want the insurers to fight for the people who pay the premiums; yet the Government amendment would penalise insurers who are prepared to do what their customers want. The employers want the insurers to take cases through the appeal process if the premium payer believes that the case is unwarranted or unfair.

The amendment would cause a reluctance by insurers to take matters right through to the appeal process on behalf of the companies that pay the premiums. When they are penalised under this provision the money will not come out of the statutory fund; it will come out of the bottom line of the insurance companies. So the shareholders will lose out as a result of paying appeal costs of not only the insurance company but also any other party to the appeal. This provision says: Be it on your head if you wish to appeal any matter before the commission. This goes against the aim of the bill. On the one hand the Government is saying that it wants to reduce premiums and encourage early resolution of disputes. On the other hand the Government is saying that insurers will pay if they pursue a case right through to appeal. If insurers lose on appeal they will not be able to take the money out of the statutory fund; they will have to pay for it out of the shareholders' money. The Opposition opposes the provision.

**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) [10.28 p.m.]: To make it as clear as I possibly can and to take issue with the Leader of the Opposition on this point, apart from the obvious argument of equivalence—that what is good for the plaintiff must surely logically be good for the defendant as well—the same principles should apply to defendant legal advice as apply to plaintiff legal advice. It has been pointed out to me that defendant legal advisers would generally be in a better position with respect to these issues because they act, as the Leader of the Opposition has pointed out, for corporations rather than private individuals. So there are inbuilt issues between plaintiffs and defendants. To leave defendants out of the cost penalty regime altogether as the Leader of the Opposition envisages would tilt the system unfairly against plaintiff interests. The whole point of what he said is that it is a great tragedy that there will not be appeals unless the defendants are confident that they have a good case and they have legal advice that they have a good case. That is the whole point of the change. So it seems to me that he has recited the obvious but has not enlightened the debate to any great extent. I ask the Committee to approve the Government amendments as they stand.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [10.29 p.m.]: In relation to the amendment moved by the Hon. Dr Peter Wong, I have a great deal of trepidation about supporting any amendment that changes words within paragraphs on the run, without seeing the written word and without going to Parliamentary Counsel to understand the ramifications of the change.

**The Hon. PETER BREEN** [10.29 p.m.]: I endorse what the Deputy Leader of the Opposition said. I could not follow what Hon. Dr Peter Wong sought to introduce into the bill. On that basis, it will be difficult to

vote for his amendment. I do not feel like trusting the Government on this issue. I ask the Hon. Dr Peter Wong to clarify his amendment somehow; perhaps he could provide it in print form. As to the rest of the provision, as I said earlier, the provision discriminates against legal practitioners; it will not have the same effect on an agent who is not a legal practitioner. I cannot for the life of me understand why the provision is there in the first place, except to confirm the Government's great paranoia about legal practitioners. I honestly do not understand it. Legal practitioners are there to protect the rights of workers. The idea that they are there to wreck the system somehow, which has been the whole tenor of the debate, is wrong. This provision simply confirms the prejudice against lawyers in the scheme, and the amendment should be voted down.

**The Hon. Dr PETER WONG** [10.30 p.m.]: In response to the Hon. Peter Breen, that is exactly what I have in mind. The union movement is similarly concerned that there is no gateway for workers to appeal. They want to negotiate for an outcome that is easier to appeal. I moved my amendment to provide that the amount must be at least \$5,000 or 20 per cent, whichever is the greater. That is the purpose of my amendment.

**Amendment of the Hon. Michael Gallacher negatived.**

**Amendment of the Hon. Dr Peter Wong negatived.**

**Question—That the amendment of the Hon. John Della Bosca be agreed to—put.**

**The Committee divided.**

**Ayes, 18**

Dr Burgmann	Mrs Nile	Mr Tsang
Ms Burnswoods	Reverend Nile	Mr West
Mr Della Bosca	Mr Obeid	
Mr Johnson	Mr Oldfield	
Mr M. I. Jones	Ms Saffin	<i>Tellers,</i>
Mr R. S. L. Jones	Ms Tebbutt	Ms Fazio
Mr Macdonald	Mr Tingle	Mr Primrose

**Noes, 15**

Mr Breen	Mr Gay	Dr Wong
Dr Chesterfield-Evans	Mr Harwin	
Mr Cohen	Mr Lynn	
Mrs Forsythe	Mr Pearce	<i>Tellers,</i>
Mr Gallacher	Dr Pezzutti	Mr Moppett
Miss Gardiner	Ms Rhiannon	Mr Ryan

**Pairs**

Mr Dyer	Mr Colless
Mr Egan	Mr Jobling
Mr Hatzistergos	Mr Samios

**Question resolved in the affirmative.**

**Amendment agreed to.**

**Ms LEE RHIANNON** [10.38 p.m.]: I move:

Page 96, schedule 4.2 [16], as amended in committee. Insert before line 6:

- (3) A person is eligible to be appointed as the Registrar or as an Arbitrator only if the person:
  - (a) is a legal practitioner, or
  - (b) has such qualifications, skills or experience as may be determined by the Minister.
- (4) The appointment of a person who is not a legal practitioner as an Arbitrator may be made on terms that limit the person to dealing with matters of a particular type or types.

I have moved that amendment to clarify the exact intent of the Greens original amendment.

**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) [10.40 p.m.]: The Government supports the Greens amendment.

**Amendment agreed to.**

**Recommitted schedule as amended agreed to.**

**Bill reported from Committee secundo with further amendments and report adopted.**

### **Third 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) [10.42 p.m.]: I move:

That this bill be now read a third time.

**Ms LEE RHIANNON** [10.42 p.m.]: I move:

That the question be amended by omitting "now read a third time.", and inserting instead "read a third time on Tuesday 4 September 2001."

In so moving, my colleague the Hon. Ian Cohen and I are pleased that the Government and the Coalition have supported several Greens amendments. Those changes increase the accountability of the scheme and take rule-making power from the discretion of the Minister. However, the fundamentals of the scheme remain unfair and badly conceived, which is why the Greens reject and condemn the bill in its entirety. I hope the Opposition notes that this amendment gives the Opposition an opportunity to live up to its statement that it would not let this legislation pass without its amendments.

I take this opportunity to register the Greens unequivocal opposition to the bill. I note that there is a new nickname going around—we have had a few in this place before. The new nickname is Devious Della, because honourable members know what happened today. Devious Della used the occasion of the resignation of Mr Reith, that other devious former industrial relations Minister, to make the following statement.

Mr Reith made enemies of about two million Australians in all walks of life, nurses, transport workers, teachers, miners, shearers, factory employees, people who put the backbone into the economic development of our nation.

Is the Minister jealous that he has made enemies of only 500,000 people in all walks of life in this State, and not two million people?

**The Hon. Ian Macdonald:** Point of order: Madam President, could you call Ms Lee Rhiannon to order on this matter? This is an absolutely intolerable away to grandstand for the Channel 2 cameras. She should address her amendment and why this bill should be read a third time on 4 September.

**Ms LEE RHIANNON:** To the point of order: My comments are most relevant because they tie in with why we need to have a deferral on this most important matter.

**The PRESIDENT:** Order! I would like to refer to a ruling of President Lackey, who pointed out that the debate on the third reading of a bill should be confined to that question. I will uphold the point of order. Ms Lee Rhiannon must confine her remarks quite closely to the actual amendment that she put forward.

**Ms LEE RHIANNON:** I conclude by saying that the Greens hope the members of this House see their way free to supporting the amendment. We have had two days of exhausting debate, but many matters still have not been clarified and there is still a lack of information. I commend the amendment to the House.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [10.46 p.m.]: The Opposition will not support the amendment to delay the consideration of this bill. We have always said that the bill needed more time for examination. Although the Government did not give that undertaking, ultimately we got it. We have been through the proper process within the Parliament tonight. While we are not happy with many of the results, the undertaking that we gave was not to defer it but to amend it. We cannot support the deferment.

**Reverend the Hon. FRED NILE** [10.46 p.m.]: The Christian Democratic Party strongly opposes the amendment. The House has spent a great deal of time debating the bill, which is long overdue. We have finished

up with a good bill, one that should be put into operation and allowed to work. Then it can be assessed later and, if necessary, amended. We do not support the attempt to further delay the bill and delay justice for the workers of the State.

**The Hon. RICHARD JONES** [10.47 p.m.]: I oppose the amendment. If members are not satisfied with the way the bill came out of the Committee, they can vote against it at the third reading.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [10.49 p.m.]: I do not support the motion and I do not support the bill. I am not happy with many of the amendments, but if one loses a vote, one loses a vote. Postponing a vote will not change the result, and probably we should not do that.

**Amendment negatived.**

**Question—That this bill be now read a third time—put.**

**The House divided.**

**Ayes, 18**

Ms Burnswoods	Mr Macdonald	Mr Tingle
Mr Della Bosca	Mrs Nile	Mr West
Ms Fazio	Reverend Nile	
Mr Johnson	Mr Obeid	
Mr M. I. Jones	Mr Oldfield	<i>Tellers,</i>
Mr R. S. L. Jones	Ms Saffin	Mr Primrose
Mr Kelly	Ms Tebbutt	Mr Tsang

**Noes, 15**

Mr Breen	Mr Gay	Dr Wong
Dr Chesterfield-Evans	Mr Harwin	
Mr Cohen	Mr Lynn	
Mrs Forsythe	Mr Pearce	<i>Tellers,</i>
Mr Gallacher	Dr Pezzutti	Mr Moppett
Miss Gardiner	Ms Rhiannon	Mr Ryan

**Pairs**

Mr Dyer	Mr Colless
Mr Egan	Mr Jobling
Mr Hatzistergos	Mr Samios

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a third time.**

**THE HONOURABLE JANELLE SAFFIN AUSTRALIAN GOVERNMENT AWARD**

**The DEPUTY-PRESIDENT (The Hon. Tony Kelly):** Order! I draw to the attention of the Chamber that in the Queen's Birthday honours the Hon. Janelle Saffin was presented by the Australian Government with an award to express gratitude, on behalf of the Australian people, for her valued contribution as a volunteer working in East Timor. The award is signed by the Prime Minister, John Howard, and the Minister for Foreign Affairs.

**ASSENT TO BILLS**

Assent to the following bills reported:

Freight Rail Corporation (Sale) Bill  
Appropriation Bill  
Appropriation (Parliament) Bill  
Appropriation (Special Offices) Bill  
State Revenue Legislation Further Amendment Bill  
Insurance Protection Tax Bill  
Insurance (Policyholders Protection) Legislation Amendment Bill

*[The President left the chair at 10.55 p.m.]*

Monday 2 July 2001

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*[Continuation of Friday's sitting].*

*[The House resumed at 2.30 p.m.]*

## **PASSENGER TRANSPORT AMENDMENT (TRANSITWAYS) BILL**

### **Second Reading**

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment), on behalf of the Hon. Eddie Obeid [2.32 p.m.]: I move:

That this bill be now read a second time.

In 1998 this Government issued "Action for Transport 2010". That document set out a program to develop a network of transitways to provide a fast, safe and reliable alternative to car travel for people in western Sydney. Transitways will be special roads that will be used only by buses, police and emergency vehicles. During 2003, the first of the seven proposed transitways is scheduled to commence operation over 30 kilometres from Liverpool to Parramatta via Wetherill Park. The Passenger Transport Amendment (Transitways) Bill seeks to provide for the operation of high-quality bus services on the proposed transitways network. The bill is needed to provide power for the Director-General of Transport to contract transitways services with the operators who will provide services on designated transitway routes.

Transitways contracts can be for terms up to 10 years. This permits a commercial investment period to significantly amortise the capital and start-up costs. Allowing the term to vary will facilitate management of the contract retendering program and integration of new transitways as they are added to the network. The amendments to the Act are consistent with the use of a competitive tender process for transitways services, both at start-up and at the end of each transitway contract. This will give the community greater value for money and higher quality of service and will promote innovation, including the introduction of new fare products. Current bus operators and possible new entrants will be allowed to participate in the process.

The bill provides contract flexibility to allow for the full range of service patterns, including the possibility that no one transitway operator will enjoy exclusive rights. Performance standards in transitways contracts will be used to uphold service quality. Existing contracts under the Passenger Transport Act have very limited performance requirements. Drawing on these current arrangements would be unlikely to achieve a transitway service that is up to expectations for this new public transport mode. This is because the present system is based on average service levels prevailing in the industry for comparable communities with similar population densities. The Government's investment in western Sydney requires that contractual performance standards be used to achieve higher service levels than the existing contracts produce, as befits this new mode. Through the tender contract mode process for trunk routes, the Government will promote the ongoing use of environmentally friendly buses available for use on a transitway system. Prospective contractors would need to select environmentally friendly buses. The buses would need to be either natural gas, electric, or non-diesel fuel buses with low greenhouse gas emissions or other low air pollution emissions, or diesel buses that meet Euro 3 standards or higher or other future technologies. The Government will impose environmental standards on operators in accordance with relevant Australian standards.

The performance standards incorporated into each bus transitway contract will be prepared on the basis of community consultation conducted by the Department of Transport as part of the environmental impact statement process and the annual service review. The environmental impact statement process for the Liverpool

to Parramatta transitway has involved extensive community consultation. Consultation identified a range of issues, such as the proposed stations, route and frequency of services, upon which the community was asked to make submissions. As indicated in the environmental impact statement for the Liverpool to Parramatta transitway, construction of the transitway corridor is being conducted with gradients and other features that could enable the introduction of light rail if future patronage levels compare favourably with the cost of light rail.

Other sections of the Passenger Transport Act will continue to regulate ordinary passenger bus services. The existing regional contract holders will be able to participate in the tender process for transitways services, albeit for services contracted under these new provisions. As is already the case, commercial arrangements between operators could provide integrated services across contract boundaries. The bill lists the proposed transitways set out in Action for Transport 2010. Because subsequent government processes, including environmental and planning approvals, will affect the route of the proposed transitways, it is not possible to further specify the exact routes at this stage. Therefore, the bill allows for the determination, variation and removal of the transitways routes by order published in the *Government Gazette*.

Similarly, the bill allows new transitways to be added by regulation if demand indicates that more transitways are needed. Such changes to the list could be made for significant sociodemographic reasons, such as a major new employment or commercial attractor, or for documented changes to transport planning priorities. The bill allows for transitional arrangements and will permit short-term, off-transitway rerouting for road construction, maintenance or in emergencies. The Roads and Traffic Authority and Department of Transport have programmed to complete construction of the exclusive sections of the Liverpool to Parramatta transitway in time to commence operations on this new western Sydney mode in 2003.

Planning and research are advancing for an additional 60 kilometres of routes to complete the western Sydney transitway network. Because of the lead time an operator would need to procure the necessary buses of a quality and quantity to satisfy bus fleet and service specifications, the Director-General of Transport will need to enter into a transitway contract or contracts within the next 12 months. Passage of the Passenger Transport Amendment (Transitways) Bill is a key milestone to permit finalisation of the planning approval process so that the competitive tender process and the construction of transitways infrastructure can commence. I commend the bill to the House.

**The Hon. JOHN JOBLING** [2.39 p.m.]: The Opposition has a number of concerns about the bill. We accept that the purpose of it is to allow the Director-General of the Department of Transport to tender for bus services to operate in Sydney's proposed transitways. The 1998 Action for Public Transport 2010 listed four transitways for construction. The bill refers to seven transitways. However, we note that to date only a small section of the proposed Liverpool to Parramatta transitway has been completed. We note also that the 2001-02 Budget Papers show blow-outs in time frames for these projects. It is fundamentally important that proper development of transport in Sydney's west should be undertaken as a matter of urgency, as clearly there is a lack of sufficient transport facilities in that area.

Ten per cent of Australia's population lives in the western region of Sydney, an area that is ever growing and has the third-largest regional economy, other than Sydney and Melbourne. The area needs adequate road transport facilities to overcome its geographical barriers to Sydney. Western Sydney has a great deal to offer, but we need to get its transport needs right, and the bill contains a number of measures that are not right.

Schedule 4 lists seven transitways, namely Liverpool to Parramatta, Parramatta to Strathfield, St Mary's to Penrith, Parramatta to Blacktown, Blacktown to Castle Hill, Blacktown to Wetherill Park, and Parramatta to Mungerie Park. On the surface, it sounds like a marvellous and exciting program. However, I regret to say that it sounds exactly like a program that the Government presented before the Olympics. Honourable members will recall that at that time the Government said it would improve railways, and that we would have Olympic Tangaras with 81 carriages. I note that the Olympic Tangaras did not eventuate. They later became redeveloped as perhaps the turn of the millennium Tangaras, which meant that they should have eventuated by 1999 or perhaps 2000. It is my understanding that we may see the first carriage by November this year or early in 2002, or perhaps later. Having regard to what is in the budget, I am concerned that that is likely to happen.

The transitway concept will cost bus proprietors a large amount of money. One does not invest in new buses without a reasonable surety of being able to have a long-term contract, because new buses are not cheap. Indeed, bus proprietors have referred to the figure of several hundred thousand dollars per bus, and a large number of buses are needed. It is pleasing that some buses may operate on compressed natural gas or other

effective methods of controlling greenhouse emissions. But these measures will take time to implement; one cannot suddenly produce them out of thin air. Many bus companies are run by small companies, individuals or family shareholders. In making such a commitment bus proprietors need to know that their contracts will be guaranteed and that the contracts will not suddenly be eroded away or, upon renewal, offered to others.

It may well be said that with this bill the Government has given but that it rapidly intends to take away. The legislation will allow the Government, if it wishes, to virtually take back what was previously given to bus companies by way of contractual tendering and a licence to operate in a specific area under the Passenger Transport Act. It will allow a bus operator to take up part of a contract area but at the same time will take away that area from the existing contractor, without compensation being paid. That is a matter of major concern. The Opposition understands the costs involved in setting up the transitways, but believes that when people are awarded a tender contract and make an investment in buses, staff, and capital expenditure, based on the circumstances as existed at the time, they should be entitled to the preservation of their assets and investments. However, the Government has decided that that is not to be.

I remind the Minister of certain matters that have transpired in the past because of dealings between the Minister and Oliveri's Metro-Link Bus and Charter, a bus company in the Liverpool-Fairfield area. The Minister for Transport sought to impose a new transitway agreement without paying compensation to the bus operators. The Minister believed that bus operators were entitled to a franchise, as it were, and that they were able to operate buses in the western Sydney area and spend a considerable sum of money on equipment in that franchise.

The bill suggests that the Government was, to put it mildly, caught napping by the Supreme Court decision in the Oliveri matter. The Oliveri matter is one of many precedents for compensation being awarded to bus companies that operate cross-regional services. For example, it is my understanding that Harris Park Transport was paid compensation by Westbus in relation to the M2 Hills city express bus service. The bill does not deal with such a circumstance, which is of concern to the Opposition as well as to the Bus and Coach Association. Indeed, in a letter from the Bus and Coach Industrial Association, which I imagine was circulated to many members, Darryl Mellish, the executive director, wrote:

The Bus and Coach Association would like to inform you of its position and concerns relating to the legislation...

- Sydney badly needs more bus only transit ways and bus priority measures and the Industry supports the initiatives contained in the 2010 Transport Plan and welcomes the funding of public transport infrastructure—

as everyone does—

- The Association recognises the Government's right to tender for the operation of Transitway services provided adequate compensation is available when a contract is detrimentally affected.

That seems to be very fair and reasonable. The bus contract holders ask that the Supreme Court ruling be upheld. They ask that the Government not withdraw substantial revenue levels from existing contracts without the payment of compensation if required. They ask that the bus contract holders and the Government resolve a way in which the transitway and outer suburban bus services can be improved without jeopardising the economic viability of the holders of government services. It will therefore come as no surprise to the Government, I am sure, that the Opposition as a matter of principle will oppose the bill. It will oppose it on the principle that private bus contracts ought not to be varied and that, in accordance with the Act, a just compensation agreement should be entered into. One cannot simply compromise an agreement.

It is important to note that private bus operators provide up to 70 per cent of this city's bus services. These private operators are totally regulated by the Passenger Transport Act 1990, which sought to place their operations on a commercially contractual basis, and to introduce a series of accreditation measures. Under the provisions of the Act, transregional or cross-regional—or whatever term one may choose to use—bus services can be introduced, and indeed have been introduced, which would allow the Government to introduce services upon a proposed transitway. To that end, in Committee the Opposition will move an amendment to schedule 1 [13] relating to compensation, which the Government appears to be denying those with whom it has contracted to supply services.

**Reverend the Hon. FRED NILE** [2.49 p.m.]: The Christian Democratic Party shares some of the concerns highlighted by the Hon. John Jobling regarding the Passenger Transport Amendment (Transitways) Bill. The bill has been presented as giving the Government the opportunity to spend up to \$800 million on 90 kilometres of transitway network in western Sydney. The transitway is intended to provide new cross-regional



trunk bus services linking key centres and interfacing with rail services. The first stage will be the link from Liverpool to Parramatta, which is expected to be completed in 2003, at an estimated cost of \$200 million. The project is expected to deliver 800 jobs. The proposed route runs through service areas currently contracted to five bus companies. We strongly favour transitways—there is no question about that—but, according to the advice that we have received from the Bus and Coach Industrial Association of New South Wales, there is no need for this bill. The Government could develop transitways without introducing this legislation.

An analysis of the bill reveals the reason why this legislation is before the House. New section 65, which refers to the prevention of proceedings concerning transitways, is the real purpose of the bill. The Passenger Transport Amendment (Transitways) Bill will enable the Government to overcome the Supreme Court decision and to excise transitway corridors from existing contract areas without providing compensation—those are the key words. This will enable the Government to tender for the operation of transitway services and pursue the highest levels of service for the benefit of commuters. It will also avoid the need to buy out existing contracts, which would cost millions of dollars. That is the real purpose of the bill. This raises the question whether the House can support the bill on the basis of natural justice and fairness for those who signed contracts in good conscience, thinking they had some sort of future planning security that would enable them to invest in buses, staff and equipment associated with running a bus company.

A two-page letter from the Bus and Coach Industrial Association of New South Wales dated 21 June contains a number of criticisms of the bill. I contacted the association and asked it to provide a written response to the legislation—perhaps it intended to do so in any case. The association has raised some practical questions regarding natural justice. The letter states:

Are you aware that:

- a) contract holders are willing to join together to provide the nominated levels of Transitway services (as is prescribed under the Act); or are willing to allow external parties to operate the Transitway services as long as compensation is payable if any (proven) revenue losses render the existing contracts no longer economically viable.

The association is not trying to stop the construction of the transitways; it is happy to co-operate on that front and it may be involved in that initiative in some way in the future. However, it is arguing that compensation should be payable if it can be proven—and it must be proven—that revenue losses have occurred under the existing contracts. The letter continues:

Contrary to the Minister's media release, the Passenger Transport Act is no longer the same as that introduced by the Coalition Government.

That impression has been conveyed by the media release in question and by other briefings. The letter goes on:

In 1997, the Government introduced major amendments that increased the obligations of contract holders to raise their investments in new vehicles and services in order to be assured of contract renewal.

Contract holders spent millions of dollars on new buses and equipment in order to renew their contracts successfully. They did that on the basis that they would have some operational certainty in the future. If amendments to the bill that are intended to be moved in Committee are passed, they will put further obligations on contract holders regarding the type of fuel they can use and so on. That may be an environmentally correct measure, but contract holders have accepted increased obligations over time on the basis that they would have some assurance concerning contract renewal. The letter continues:

In response to this revised Act, contract holders have committed sizeable capital funds in order to be guaranteed the long-term revenue levels (as guaranteed under the Government's 1997 amendments) so as to service their capital repayments.

I am sure that all honourable members know how expensive new buses are. People expect—and rightly so—to travel on modern, comfortable buses. In the past the condition of buses was allowed to run down until they were no longer suitable to carry passengers. That situation has changed dramatically in recent times. During the Olympic Games the Government negotiated the co-operation of the bus companies to tie in private buses with Olympic transport. Those who used those services travelled on modern, comfortable buses, which is one consequence having funds invested in bus transport. The Olympic Games would not have been so successful without the co-operation of the bus companies, which made their buses available as part of the overall Olympic Games transport plan.

The association goes on to say that the Supreme Court ruling should be upheld. It is not good policy for the Government to introduce, and for Parliament to rubber-stamp, a bill such as this in order to get around a

Supreme Court decision, which was based on evidence and the facts of the case. I do not think Parliament should be party to that sort of action. Such things occur from time to time, but it is grossly unfair in this case. The association calls on the Government not to:

... withdraw substantial revenue levels from existing contracts without compensation (if required).

Perhaps compensation will not be required in some cases. The letter recommends:

Companies taking out contracts with the Government do not have the terms of their contract varied once they have committed substantial investment ... the Government and the bus contract holders sit down and resolve a way in which Transitway and outer-suburban bus services can be improved without jeopardising the economic viability of holders of government contracts.

The letter, from Darryl Mellish, the association's Executive Director, concludes:

Private bus contractors support improved outer-suburban bus infrastructure, such as Transitways.

The association is not trying to obstruct their construction. It continues:

Private bus contractors have no objection to tendering, as long as compensation is payable (if justified) for contract holders who have previously been forced to invest heavily in long-term capital equipment.

We share the Opposition's concerns about this bill—particularly about section 65, "Prevention of proceedings concerning transitways", which is drafted very legalistically. It states:

No compensation is payable to or by any person for loss or damage arising directly or indirectly from—

The bill then goes on to list many different considerations, and continues:

... and no proceedings for damages or other relief, whether grounded on the provisions of any contract or otherwise arising at law or in equity, for the purpose of restraining any action referred to in paragraphs (a)—(d) or (f), or of obtaining compensation in respect of any such loss or damage, may be instituted or maintained.

Lawyers have obviously worded this bill in an attempt to anticipate any possible way in which bus companies in the future could claim compensation. This clearly puts it in the category of retrospective legislation, which would take away the legal rights of bus companies. I am sure honourable members would regard that as unjust—even those who would not have sympathy for private bus companies or those who have a socialistic view of society and want everything run by the Government. This bill should be looked at objectively as a question of justice—in this case natural justice.

**Ms LEE RHIANNON** [3.00 p.m.]: The Passenger Transport (Transitways) Bill resolves the current conflict between the Passenger Transport Act and the operation of bus-only transitways. As such, it is the next and possibly final legislative step towards one of the greatest errors of public transport planning and construction in Sydney. The Greens oppose this bill in its current form. The Greens believe that buses are a useful and efficient component of any public transport system. They excel in short-haul, low-capacity functions where operational flexibility and low fixed costs justify the discomfort and environmental damage of bus operation. Buses offer a low-cost and low-performance package, depending on the form of right of way employed.

From a user's perspective, however, bus systems are often illegible, with a multitude of intersecting, winding and twisted routes starting out at low frequencies into catchment areas. The routes often lack lineal symmetry and the timetables require a commuter to have an unreasonably sophisticated understanding of bus operations to comprehend them. Bus-based systems are rarely simple. Bus transitways are based on the idea of using buses to undertake the long-haul high-capacity role. In progressive cities, that task is more often undertaken by railed vehicles and it is simply a wrong solution to the problem of inter-centre travel in western Sydney. Buses cannot perform that task well. Most high-quality public transport systems exhibit strong passenger interchange activity between modes.

In a city the size of Sydney, it is total nonsense to argue that a bus-based system in western Sydney can provide one-seat travel from residence to workplace for all potential users. Buses cannot provide high levels of passenger amenity on long-haul trips. They cannot provide high capacity, in part because they do not afford ease of loading and unloading and, unlike railed vehicles, they cannot be coupled together into longer vehicles. They are capacity inflexible. In her second reading speech the Minister referred to environmentally friendly buses. It is necessary for honourable members to note that buses exhibit high noise levels and, if powered by diesel, emit large quantities of particulate air pollution that has been linked to increased incidence of lung disease.

There is no such thing as a clean bus, and even the so-called low-emission buses running to high European standards generate local air pollution. Further, buses running at high speeds—up to 110 kilometres per hour has been predicted for the western Sydney transitways—is another area of concern, as they are extremely dangerous. It is frightening to imagine a bus hurtling along at 110 kilometres per hour, with no seat belts and passengers often standing. If there were a collision passengers would be severely injured. High speed is not appropriate for buses. International experience with bus transitways has been anything but a resounding success. In the United States of America most of the bus priority measures introduced in the 1970s have been white-anted by the roads lobby. All manner of non-bus vehicles can now be found running down rights of way that were once exclusively earmarked for bus use. That is why the Greens are left wondering what will happen in our system.

Experience has shown that roads made exclusively for buses do not remain that way. The fundamental objective in contemporary transport planning is to get car drivers to switch to public transport, and there is little or no international evidence to support the view that a busway will achieve this to any great extent. Building busways is simply not world's best practice. It is interesting to note, for example, that Ottawa, which is often cited by bus advocates as a shining example of the application of bus technology, is no longer considering the extension of its bus transitway. In fact, it is now investigating light rail systems in combination with bus operations. Ottawa has seen the light. It is interesting to speculate why the Carr Government has chosen not to.

The reality is that there are excellent public transport solutions to the problems of western Sydney that transitways are supposed to address. Light rail, in combination with feeder buses, shows none of the air quality, passenger amenity or capacity limitation problems that plague buses on long haul routes. Light rail offers a superior performance-for-investment package for certain passenger volumes. It is time to recognise that bus and rail-based technologies are different in application, passenger attractiveness and effect, and the Government's current "buses will do it all" rhetoric is plainly absurd. Buses did not do it all during the recent Olympics.

Honourable members should remember the great experience of public transport a year ago during the Olympics. Light rail requires greater up-front capital investment than bus transitways—more so in rolling stock cost than in per-way construction. The Ottawa costings clearly demonstrate this, but these costs would be more than recovered by both the lower running costs and the greater level of modal shift away from private transport. It is a massive tragedy for western Sydney that this Government, with its record surplus, is unable to find the marginal additional funding to build a light rail system in western Sydney. Without the benefits of fixed rail, western Sydney will continue to be the poor cousin of the eastern suburbs transport elite, so happily supported by this Government.

The Greens, together with many sustainable transport activists, have consistently argued for the large rail alternative. The Greens believe that a fair appraisal of light rail would overwhelmingly support it and result in its rapid deployment, with massive real benefits to western Sydney. At every stage of this saga, the Greens have explained to the Minister for Transport that he is pursuing the wrong option, based upon highly questionable advice from vested interests. Although we are concerned about the overall thrust of this bill, the Greens welcome the comments made by the Minister in her second reading speech and the commitments outlined. The Greens are concerned that the Government embarked on the transitway project with little or no regard for its impact or for the benefits of light rail alternatives. It was sold the idea by a bunch of consultants—probably, as we have seen too often in the way the department operates, a bunch of consultants with a bus fetish.

The Government blinded itself to the light rail alternatives; it ignored the local environmental impacts; it pleaded ignorance of the international failures; and it ran away from its real obligations to improve the air quality of western Sydney. There were positive statements made by the Ministers, and we acknowledge those in relation to public consultation, ability to convert to light rail and performance standards, and I will refer to them in the Committee stage. However, the Greens believe that one aspect of the bill is worthy of note. The Passenger Transport Act effectively divides western Sydney into a number of individual fiefdoms, in which local bus barons reign supreme without the challenge of competing against government buses—a point the Greens have raised time and again in this Chamber, and will continue to do so—without integrated ticketing to other modes of transport, and without the high standards of service set by the government bus operator.

The people of western Sydney will continue to lose out. The changes advanced in this bill will not substantially change that situation. The people of western Sydney are left the losers in the cosy little arrangement between the Government and the bus industry. The transitways, because they cross transport franchise areas, have blasted a hole right through this sweetheart deal, and that is causing some angst in both major parties. Some bus barons are up in arms at the idea that their cosy little monopolies are under challenge. All this bill does is highlight the absurdity of the continued private monopolies.

Why does the Government cling to the idea that private sector provision of an essential public service is appropriate to the needs of Sydney, in this case western Sydney, in the twenty-first century? Private provision of urban public transport is a bucket of despair that this administration continues to foster for its own craven reasons. They are strong words, but it is a disastrous situation for people who live in western Sydney who try to move around the city using public transport. It is time for the Minister to stop delivering taxpayers dollars to these bus fiefdoms via the slush bucket called the School Students Transport Subsidy and start demanding much more than the service crumbs that the industry has traditionally provided.

However, the large bus monopolies have little to fear from this Government. As we have seen, time and again they have been protected. The interjections suggest that such protection will continue. Undoubtedly, some small-fry operators will be sacrificed in the process of creating vast transitways. But the big boys—who have powerful friends—will continue to prosper from the benevolence of Sussex Street. One thing is certain: The best interests of western Sydney residents will continue to be sacrificed on the altar of mediocrity. The Greens warned the Government in 1999, during debate on an earlier enabling bill, that changes to the Passenger Transport Act would be necessary. I spoke with the Minister on many occasions and at public meetings on these issues. The Government ignored this warning. Now, one expensive court challenge later, the Government has introduced amendments that should logically have been made way back then.

This is a strange way to go about public policy. Could it be that fear of a backlash by the handful of private bus operators who regularly hold the travelling public in western Sydney to ransom was the cause of this delay? I would be interested to hear from the Government about that. A cloud of doubt remains over this bill. As it seeks to remove a property right previously bestowed upon a private corporation, there is likely to be a further legal challenge. To date, the Government has not said anything to rule out that possibility. Further uncertainty and further cost will result, highlighting once again the flawed underpinning of the Passenger Transport Act and its private franchising philosophy. It is yet another sick legacy of the Greiner era that this Government has singularly failed to undo in the six years it has been in office.

The falling out between some of the bus lords and the Government will be little comfort to the people of western Sydney. Left without the benefits of integrated ticketing, government bus services or light rail, they are to be sold a bus transitway system that has not worked overseas and will not work here. The health, mobility, safety and economic development of the communities of western Sydney have yet again been sacrificed to the brown paper bag approach of Sussex Street and the craven attitudes of the Labor Cabinet. The Greens will continue to speak out on this issue, because the huge campaign donations obviously have an impact on the way the Australian Labor Party develops its policy and brings forward legislation. The Coalition is in a similar position but, as it is such an ineffective Opposition, it is barely worth talking about.

There is an alternative vision for western Sydney—one which is and has been espoused by the Greens, transport activists and many in the local community—one that is founded on integrity and rational transport planning. This vision is based on bringing to western Sydney a government bus service with cleaner buses, a service-based ethic and superior timetables. It is based on light rail for the longer haul, and higher demand routes which are currently slated for bus-only transitways. It is based on a publicly owned system with all the benefits of a truly integrated ticketing system, which only a public sector service can provide. I hear guffaws from the Opposition benches. Are they an indication that the Opposition believes that these services should not be provided to the people of western Sydney and that it would protect the fiefdoms that are in place?

The Greens have long argued that making this vision a reality requires the political courage to stand up to the private bus lords, to reject their campaign donations and to put the needs of the communities of western Sydney ahead of the greed of the Government's mates. This bill is not about vision. It is about a failed system that will do nothing but further entrench the inappropriate use of buses by second-rate bus operators. The Greens will seek to amend this bill to correct at least some of these failings. Without these amendments, the Greens reject the bill and call on the Government to invest in a sustainable, clean-air, mobile future for western Sydney that is based on international best practice involving the intelligent use of light rail and bus technologies.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.16 p.m.]: The Australian Democrats are very concerned about the Passenger Transport Amendment (Transitways) Bill, which follows the Government's trend of asking the wrong questions. The questions posed in this bill are: Do you want a transitway that will be separate from the existing private bus monopoly in western Sydney, or do you want the existing private bus monopoly in western Sydney? That is an extremely poor choice. We want a proper public transport system in western Sydney. The Government says, "Sorry, that is not provided for in the bill. Perhaps we can develop some light rail later, although that will create the problem that we will be tied to a contract with a bus company and

will have to fight the validity of that contract in the High Court." The vested interests, which are against proper transport planning in western Sydney, will be even stronger than they are now. The control that the vested interests seem to have over government policy is frightening.

In a sense, this bill is an attempt to place limitations on them. I do not know whether it will succeed or not. I read, with some horror, an assessment by the Macquarie Infrastructure Group of the prospects of investment in private infrastructure projects. At that stage the group was investing in tunnels in Germany and motorways in Yorkshire and around Manchester. I believe the group had a number of motorways in Sydney, including the Eastern Distributor and the M5 East, and the motorway around Melbourne. It also owned the bridge over the harbour at Lisbon, Portugal. It had negotiated a guarantee of the amount of revenue it would collect from the bridge toll, which included a top-up provision from the government. The government had been tardy in paying one of the quarterly payments. The group said that, unfortunately, was part of the risk of being an infrastructure investor. I thought of it from the point of view of the people of Lisbon, given that we are building Sydney Harbour tunnels and motorways with excessive government guarantees.

*[Interruption]*

Oh, shut up, Jan Burnswoods! The only thing you do is make it difficult for me to make speeches. Why don't you just hold your peace? Madam President, would you please ask the noisy, silly member up the back to be quiet?

**The PRESIDENT:** Order! I remind honourable members that interjections are disorderly at all times.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** The government of Lisbon had negotiated a pretty crook deal, and Lisbon citizens were going to be coughing up to an Australian infrastructure owner so that the government could come up with extra money because the Australian infrastructure owner was not making as much profit as the owner's shareholders wanted. In a sense, this is one of the problems with deals done between government and private contractors that are based on certain assumptions of traffic flow and on guarantees of remuneration and returns. In New South Wales in particular, but Australia generally, paternalistic governments that deal with the private sector make these deals commercial in confidence so that we do not know whether we are being robbed blind, and we must be quiet and pay up. We have scorn poured on us if we try to talk about it, even in Parliament, and suggest that that is unsatisfactory.

The bus monopoly in western Sydney, as I recall, came from the days of the Coalition, which has proposed an amendment to ensure compensation to the bus company that has that monopoly. That seems to indicate that the Coalition, in good faith, is looking after the contract that it negotiated, whether or not it is a good deal for the taxpayers. The High Court may well find that a contract is a contract is a contract, and that Parliament cannot unilaterally change it. I confess, I would not fall over in surprise if that were to be the decision. However, I do not pretend that it is a desirable state of affairs. It is undesirable to have had those sorts of contracts in the first place. If we must have those sorts of contracts, they should be open to scrutiny by the public. I have the open government bill coming to address that issue. Then, of course, if we have been totally ripped off and are getting robbed blind, I wonder what we can do about it. I wonder whether a bill like this is an attempt to correct an anomaly.

The Democrats' position is that no government should get itself into these situations. The government should have a decent transport plan, should stick to that plan, and if it cannot fund the plan in the short term it should issue bonds and fund it that way—which is how infrastructure in most of this country was built. The idea that we must reduce our debt—even if that means that everything will be owned by foreigners, and even if everything we do and every time we drive down the street results in the dollars going overseas—is an absurd economic fashion that will come back to haunt us as we approach third-world status and our dollar drops further with de-industrialisation and a lack of commitment in ourselves.

I return to a more pragmatic debate on the bill. The Democrats support proposed section 28C, which refers to performance standards in contracts with private bus operators who will tender for services on the proposed transitway. However, there is a notable lack of detail on what comprises the standards. Will they comprise passenger safety standards, environment protection measures such as the use of low-emission fuel-powered buses, and passenger service delivery indicators? I was discouraged to find that a number of second-hand buses that did not meet European standards were imported into Australia because this country has lower diesel emission standards than do the Europeans. That means that the buses of western Sydney will be here for another 25 years or so. We have not yet declined to the Philippine standards, under which the buses would be here for another 50 years or so. If there are no emission standards for those buses, we can look forward to increasing air pollution for a long time.

**The Hon. Malcolm Jones:** How many buses are out there?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Thirty-one. The question is, will these contracts be covered under commercial confidentiality clauses, as were the contracts for the Eastern Distributor and the M2? When I visited Las Vegas some years ago as part of a tour of the Australian Council of Young Political Leaders, Las Vegas was extremely proud of its walk-in-walk-out contract, under which it had to maintain its buses at a certain age and in a certain state of repair. Those quite detailed contracts were public documents. The idea was that the tender, when it expired, could be thrown open and any other tenderer could come in and operate those buses. In other words, there was not a huge advantage of incumbency that meant that the contract operator remained a monopoly forever.

I am very concerned, given the history of New South Wales and Australia in tendering, and the culture of secrecy under which a few green public servants go in against some very experienced businessman and lose every time, that this situation never changes under the culture of secrecy that this Government has perpetuated. What safety standards will be in place for these buses? Buses travelling down the M2 at 100 kilometres an hour carry standing passengers and have no seat belts. The proposed transitways may only be bus lanes, however accidents can still happen. Therefore, I seek an assurance from the Minister that passenger safety will be addressed in these contracts and that there will be transparency in terms of those contracts, especially in relation to safety equipment and passenger service levels.

The service delivery records of a number of private bus companies in western Sydney leave a lot to be desired. Few private operators seem to be customer focused in providing convenient bus operation schedules to consumers throughout the day. In order to maintain profitability, non-government operators tend to run services at peak hours and reduce their services at other times. The residents of western Sydney—a region where approximately a third of the New South Wales population lives—have been poorly served by governments, past and present, in the provision of an adequate and convenient public transport service.

Naturally, low-income earners are forced to the outer suburbs of Sydney, because of comparatively lower costs in rent and property prices compared with other areas of Sydney. Lack of adequate public transport necessitates dependence on the private car in less densely populated suburbs. This has an economic effect on the household and a greater social cost in terms of increased air pollution and traffic. If we are trying to look ahead in urban planning—and, really, we should not look ahead for anything less than 30 years—we could confidently look forward to an increase in oil prices as oil becomes extremely scarce. The basic paradigms on which western Sydney is designed—that is, dependence on the private car and, at best, the occasional bus—will be an absolute millstone around the public's neck. That is why this transitway should at least be a light rail corridor.

The bill facilitates the development of bus-only transitways along several proposed corridors, as outlined in the Action for Transport 2010 transport plan for western Sydney. The Democrats support the development of transitways, but to exclude other modes of public transportation from using the transitway shows a lack of imagination when it comes to developing a comprehensive transport plan for western Sydney. One cannot help commenting, after looking through the plans, that the older they are the better they look. The compromises and niggardliness have got worse recently.

The Australian Democrats' transport policy, entitled "Going Places", acknowledges that buses do provide a flexible mode of public transport in established areas of urban development where the only transport infrastructure in place is roads, and that they can be used for cross-regional, radial or local transportation purposes, but buses basically are better for providing a feeder service to link commuters with major or large capacity transport services, such as rail. To have a bus operating on a 30-kilometre corridor between Parramatta and Liverpool is absurd. We believe this should be light rail. Buses may yet rule in western Sydney!

On page 3 of a newsletter issued by the Department of Transport on the Liverpool to Parramatta transitway, an environmental impact statement [EIS] has a section called "Your questions answered". The Government responded to the question "What effect will the transitway have on air quality?" in the following way, "The transitway is expected to improve air quality because it will encourage people to take public transport instead of their car." That does not make much sense if the State Government is encouraging people to get out of their cars and into diesel-guzzling buses. The newsletter continues, "The Government is committed to ensuring the use of low emission buses on the transitway." Unfortunately, that commitment is not part of the legislation.

As I said previously, those who are likely to tender are likely to have old buses that do not meet European standards. How strange! Nothing in the bill indicates a commitment to lower fuel emission buses. I

intend to move an amendment to that effect and I trust that the Government will support it in view of the comments in its pamphlet about its commitment to this cause. The Better Western Sydney Committee, which is headed by a stalwart of public transport advocacy in western Sydney, Neil Parker, has been trying for some time to get action on this issue and on the Western Sydney Orbital. A letter dated 16 November 1999 sent by Mr Parker to my office commented on issues raised by Parramatta council about proposed transitways. It stated:

The EPA have clearly stated that there is no safe level of diesel exhaust and currently one diesel bus is equal in particulate pollution to 600 petrol driven cars. Therefore a 10 minute bus service has the pollution levels of 36,000 cars per hour and exhaust from motor vehicles is a major contributor to childhood leukaemia and asthma.

The convergence of four transitways on Parramatta will create huge congestion in the Parramatta central business district. The existing 169 buses per hour converging on Parramatta, plus the estimated 96 from the transitway, will add up to 265 buses travelling to and from Parramatta station. It is interesting to note that the Minister has distorted several of the recommendations made in the groundbreaking 1971 Sydney Area Transport Study report. The study recommended that the M4 be constructed with a double-track railway, which was to start at Parramatta and join the M4 at Rosehill. A feasibility study in 1986 commissioned by Rob Cauldwell, the then Director-General of the Department of Urban Affairs and Planning, recommended that light rail be the preferred mode of transport along the Parramatta to Hoxton Park route.

If the proposed transitways outlined in the bill are to proceed, the construction of rail lines enabling them to be used for the future development of light rail would make good economic sense. That would probably increase the cost of construction by an additional 20 per cent. However, in light of what happened in Ottawa, Canada, the long-term benefits would outweigh the short-term cost savings. According to a feasibility study carried out by PPK Rust, the Ottawa bus transitway has never reached its estimated capacity. The price of construction has more than doubled the estimated cost, and passenger numbers fell by 20 per cent. The proposed Blacktown to Castle Hill bus-only transitway is merely a short-term solution to problems that face urban planning in the rapidly growing north-west development sector. Approximately 400 buses a day would be required to service commuter travel from the north-west and The Hills district in the next 10 years.

According to the 1996 Commonwealth census less than 14 per cent of The Hills district residents use public transport. Correspondingly, 76 per cent are totally dependent on private vehicles, and household dual car ownership is high. Light rail should be considered seriously as the preferred mode, as it is environmentally, economy and passenger friendly. It could be constructed along a 12-metre easement. An articulated two-carriage light rail vehicle can carry 182 passengers, but an articulated bus carries only 114. The cost of construction would be \$2 million per kilometre, which includes the construction of power supply substations for light rail vehicle propulsion. Light rail has a low entry cost of 0.8¢ per passenger per kilometre. The PPK report is interesting because it illustrates the extent to which the Government has backflipped and not committed itself to what it should have been doing. A memo dated 29 September 1997 from a senior advisor, Greg Sutherland, to the Minister regarding the Hoxton Park to Parramatta public transport corridor states, *inter alia*:

#### **BACKGROUND**

The attached consultant's report prepared by PPK is a matter of considerable concern.

Whilst it purports to be a study to examine the best way and route for implementing improved trunk urban public transport there appears to be a strong case for considering it represents a pre-emptive attempt to consolidate the bus industry's position as the provider of public transport in Greater Western Sydney.

It should be noted that one of the "assisting consultants" for the report, McCormick Rankin International, are currently engaged in selling the "Transitway" concept of bus transportation based on their involvement in the Ottawa Transitway in Canada, a facility covering some 24 kilometres. This facility, unlike the definition provided above, is an exclusive busway and does not provided a light rail option.

Whilst Ottawa has attempted to export its transitway concept it has been singularly unsuccessful in Canada and the United States where numerous larger cities have opted for light rail to address transit improvements. Leading transit nations in Europe, acknowledged leaders in enhancing public transport accident and utilisation, have shown no evidence of following the Ottawa Transitway concept.

The one successful export of the transitway has been Brisbane where the City Council has recently made a decision in favour of the transitway. It has been suggested that this decision could be a similar ill informed, colonial cringe decision to that which has seen Adelaide have the only "O-Bahn" (guided busway) outside test installations in the world.

The memo then contains some specific concepts as an appendix. The memo continued:

PTAC, at its recent meeting, expressed its view that planning for development of the Hoxton Park public transport corridor should include consideration for fixed track use, as well as buses.

**COMMENT**

The draft report prepared by PPK consultants covering the Hoxton Park to Parramatta Public Transport Corridor provides a number of conclusions which lacked substantiation and in a number of areas intrude into areas of policy.

The report appears to be championing the bus industry and a form of transport provision intended to guarantee further work for PPK and their associates, McCormick Rankin International. It is a matter of concern that the PPK Report presents as a viable option the bus based transit system that operates over a mere 24 kilometres in the provincial Federal capital city in Canada.

An earlier section in the report commented that Ottawa was very like Canberra in that it has a white-collar work force with a small, well-off population and a total lack of light or heavy urban services. The memo continued:

A further concern is that the costs quoted in the PPK Report do not accord with publicly available costs of the Ottawa transitway.

**RECOMMENDATIONS**

1. That the draft PPK Report be noted, in so far as it proposes detailed feasibility studies be undertaken on the Hoxton Park to Parramatta Transport Corridor.
2. That in view of the need to provide Government with an overall view of the transport proposals for the Corridor, the Feasibility Study proceed and include the vital questions of access to Parramatta Station, direct interchange links to the proposed Parramatta-Chatswood heavy rail link and consideration of an extension providing a more direct service to the Westmead Hospital precinct beyond Parramatta.
3. That in view of the serious shortcomings and conflict of interest evident in the PPK Report that firm be not included in the list of firms invited to undertake the Feasibility Study.

That memo was approved by the Minister on 30 September, presumably 1997. Apparently, the Minister agreed that PPK did a sales job on the proposal. PPK does not agree that the Ottawa transitway is a great success. Yet here we are, nearly four years later, putting a transitway bill through the Parliament. Can we believe that this is a credible Government that is doing its best for us? I am afraid it is not. It is sad that in this Parliament we are forever taking second-rate options.

The Government, in its usual pragmatic way, asked me, "Do you support the bill? You have two rotten options, but will you support ours?" That is the way in which the Government works, which irritates me beyond measure. Sometimes I would like to oppose everything, just for the sake of it. We work at a glacial pace in this Chamber. We have been denied the ability to debate certain matters as Government legislation must be dealt with and we know that proposed amendments to that legislation have no chance of being accepted. Another great opportunity has been lost. Will the Government succeed in at least putting these services out to tender? I can only guess at the tender conditions. Will there be transparency in this process? Within that framework, I suppose the Australian Democrats support the bill.

**The Hon. IAN COHEN** [3.41 p.m.]: The contribution of the Hon. Dr Arthur Chesterfield-Evans reflects his concern about the Government's Passenger Transport Amendment (Transitways) Bill. As my colleague Ms Lee Rhiannon said earlier, the Greens hope there will be advances in, and government reform of, these important areas of public transport. No-one would disagree that there is a desperate need for improved public transport in western Sydney. People in western Sydney are constantly being short-changed. They live in an environment in which motor vehicle transport is their sole means of transport. That is to the detriment of non-drivers, who do not have access to adequate public transport.

I listened with interest to the comments made earlier by my colleague and to some of the interjections that were made that related to the socialisation of public transport. Whichever way we look at these issues, philosophically or pragmatically, there are significant problems in relation to public transport and privately owned transport in western Sydney. People travelling to Strathfield railway station cannot continue their journey by rail. They have to continue their journey using a private bus system, which is somewhat less effective in its servicing of that area. That is just one of the problems that is faced by people in western Sydney.

I have not mentioned other issues of concern to the Greens, such as air pollution and the lack of a properly integrated transport system. Road-based transport has a detrimental effect on the health of residents in western Sydney through air pollution, accidents and other matters. As Ms Lee Rhiannon said earlier, transitways are not the solution to the provision of public transport. The Greens' proposed solution for the transport needs of western Sydney is heavy and light rail, with government feeder bus services. Recent increases in rail patronage clearly indicate that people want to use trains. The success of the Olympics Games can be attributed mainly to the successful operation of the train system. Train systems win hands down in the movement of people en masse.



There is a clear relationship between bus and rail services. Bus services, if used effectively, are more efficient over shorter distances in their distribution of people from a rail node. However, bus services cannot replace heavy and light rail—the most effective and cleanest method of public transport. I am disappointed that the Government is moving away from its commitment to build the Parramatta to Chatswood rail link, which would achieve real public transport improvements for western Sydney. The Government should be taken to task on that issue. The Government claims that it cannot afford new rail lines, but it is spending billions of dollars this year on new roads.

Many years ago a road formula was adopted in Los Angeles that was supported by the petroleum industry. Roads are replacing rail as the preferred method of transport, a short-sighted short-term option that will not work in the long term. Our major concern is that the Government still subsidises private bus operators. At a recent estimates hearing the Minister conceded that a substantial amount of the \$400 million school student transport scheme was paid as subsidies to private transport operators. That is completely inappropriate and a waste of resources. Before this transitway bill locks in this system we must determine whether short-haul, low-cost buses are the way to go. We must also provide heavy and light rail for long-haul services.

I listened with a degree of interest to earlier arguments about the provision of rail services. However, light rail seems to have been left out of that equation. It would be entirely appropriate if light rail services were provided in western Sydney. Such services would be successful in the long term. I was concerned when I heard that the buses using this transitway will be permitted to travel at 110 kilometres an hour. I have been assured by Government advisers that they will probably only travel at about 80 kilometres an hour, but I am concerned that those speeds will increase if bus stops are 800 metres apart.

If buses using the transitway are travelling at substantial speeds and they are forced to stop suddenly, that could result in severe injury to those who are standing in the buses. Those sorts of injuries can be occasioned even if a bus is travelling fairly slowly. All hell would be let loose if a bus suddenly had to apply its brakes. It would cause injury and trauma to many passengers. It would be most unsafe if buses were permitted to travel at 110 kilometres an hour. In my view, it is unsafe even for buses to travel at 80 kilometres an hour. Some important issues, such as integrated ticketing, have not been addressed in this legislation. Will we have a system that will operate smoothly and efficiently?

Under this legislation, an increase in rail infrastructure and in rail patronage will lead to an increased use of bus services, which is a step in the wrong direction. It will facilitate a continuation of existing relationships between private sector bus companies and the Government. The Government must move away from infrastructure such as this, as it will be of little overall benefit to the people of western Sydney. The Government, for all its rhetoric, should think big and take some dramatic steps to improve the public transport infrastructure in western Sydney. In the view of the Greens, light and heavy rail is the most appropriate infrastructure. Bus transitways will not resolve the pollution problems in western Sydney and they will not deliver what the people of western Sydney need and deserve: an efficient and integrated transport system.

**The Hon. RICHARD JONES** [3.50 p.m.]: I support the passage of this bill. I was a little confused as to why compensation should or should not be payable to the private operators. I have had discussions with the ministerial advisers on that aspect, but it would appear that the operators will not lose much in any event. They were given these routes under the 1990 Act. They were never tendered for; there was no tendering process. In a sense they were given routes which were worth a certain amount of money. However, they will have certain rights on the transit route and will not be losing much at all. In my view it is important to get this transitway up and running as quickly as possible.

We desperately need to increase the amount of public transport available in the city of Sydney. We must reduce air pollution and we have to try to persuade people to get out of their cars as often as they can. We are already witnessing terrible pollution on the M5 East, for example, with vehicles using the tunnel. If we can reduce the number of private cars in the city of Sydney, and encourage people to travel on gas-powered buses—I understand most of these buses will be gas powered—the better off we will be. I do not believe we should do anything to inhibit the setting up of this system and it should be done as soon as possible. If compensation were payable—as I said, I do not believe it is justified, from the information I have been given—it would delay the whole process for probably years.

I support the legislation and will also support the Greens amendment. The environment groups support the move to broaden the tender for transitway services to allow State Transit to bid for contracts to supply transitway services. As they have better, cleaner buses with integrated ticketing and concessions, it would be

helpful to the people of western Sydney and would dissolve the bus company monopolies that currently provide inadequate services. The group is also of the opinion that it would be beneficial to include in the bill provisions for independent community consultation regarding performance standards and contract renewal, fines for breach of performance standards, requirements or targets set for buses using the transitway to be gas powered and airconditioned, and a further assurance that a dedicated transitway will not become a public road. Having considered the matter carefully, I support the bill.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [3.52 p.m.], in reply: I thank the Hon. John Jobling, Reverend the Hon. Fred Nile, Ms Lee Rhiannon, the Hon. Dr Arthur Chesterfield-Evans, the Hon. Ian Cohen and the Hon. Richard Jones for their contributions to the debate. Some amendments to the bill have been foreshadowed and there will be an opportunity for further debate at the Committee stage. I want to deal with a number of the matters that arose during the course of the second reading debate. I refer first to the comments of the Hon. John Jobling.

While the Opposition has made clear its opposition to this bill, the reasons given are a little thin if it relies on its concern about the Olympic Tangaras as a reason for opposing transitway development in western Sydney. I am not sure I understand the link. Nonetheless, I want to put some of the details on the record. The Hon. John Jobling appeared to indicate that he had little faith in the transitway development actually proceeding. As honourable members will be aware, the proposed transitway network in western Sydney is 90 kilometres long and estimated to cost \$800 million. It is proposed to link key centres, such as Liverpool, Wetherill Park, Parramatta, Strathfield, Blacktown and Mungerie Park.

The transitway network is a new and reliable public transport option that will allow commuters to directly access key rail stations and employment and commercial centres without having to change buses between the limited and exclusive service areas of current bus providers. The Government has allocated \$44 million in the budget for ongoing planning and development of the transitway network. The Liverpool to Parramatta link, the first major transitway section, is due for completion in 2003. It will link Liverpool and Parramatta via Wetherill Park, and area that employs 20,000 people.

I turn now to compensation, an issue referred to by a number of honourable members. We need to be clear about this aspect. A number of honourable members indicated that they believe the bill takes away something that has already been given. Clearly, it cannot be portrayed in that way. It is not correct to say that the Government is taking away something that has already been given. The transitway is a new service, and the Government considers that is essential to competitively tender for transitway service contracts to get the best value for taxpayers' money and the highest levels of service for the community.

The current legislation and the Supreme Court decision do not permit the Government to achieve that. The alternative to the bill is to grant each existing contract holder an exclusive contract to the portion of transitway corridor that is located in its service area. Between Liverpool and Parramatta, for example, five bus companies provide services within the exclusive areas defined by their contracts with the Department of Transport. The transitway is designed to enable commuters to travel directly between Liverpool and Parramatta on one service without having to change buses during the journey as they are currently forced to do. I reiterate that the transitway is a new service and the Government believes it is correct and proper to essentially competitively tender for this service.

A number of speakers raised the issue of compensation. The introduction of express stop services operating on trunk routes on dedicated bus transitways between key centres is a new service for western Sydney. The new transitway service will attract more passengers away from private vehicles and onto public transport. The \$800 million transitway investment is aimed at meeting the need of the growing population in western Sydney. Existing bus operators will benefit from this by being able to feed more passengers into stations along the transitway. There are 35 stations along the Liverpool to Parramatta transitway. Existing operators may also be able to operate on those segments of the transitway corridor located in their exclusive service areas. Existing operators are free to tender for the transitway contracts. The Government believes the issue of compensation is a furphy. Entitling these contract holders to compensation for the provision of a new service which is costing the Government \$800 million would tie up the Government in costly litigation, add millions of dollars to the project and may, in fact, force the Government to review the project.

I refer briefly to light rail, because the subject was raised by the Hon. Ian Cohen and the Ms Lee Rhiannon, amongst others. The Government has always said that at this stage the population levels along the

proposed transitway routes are not equivalent to the routes where light rail works. Patronage levels are very important in making public transport infrastructure work. A good example is the poorly planned airport rail link initiated by the Coalition Government, where premium fares and far fewer commuters than predicted have put the whole project in financial difficulty. Light rail, without sufficient patronage, would not be viable. As I indicated in the second reading speech, construction of the transitway corridor is being conducted with gradients and other features that could enable the introduction of light rail if future patronage levels compare favourably with the cost of light rail. Other issues were raised in the second reading debate, but I believe those matters will be debated at the Committee stage when a range of amendments will be moved. At this stage I urge honourable members to support the second reading of this bill.

**Motion agreed to.**

**Bill read a second time.**

### **In Committee**

**Clauses 1 to 3 agreed to.**

### **Schedule 1**

**Ms LEE RHIANNON** [4.00 p.m.]: I move Greens amendment No. 1:

No. 1 Page 4, schedule 1 [10]. Insert after line 25:

- (2) The State Transit Authority is authorised to bid for a service contract.

This amendment will enact the right of State Transit to bid for services on a transitway. We believe that right is essential and needs to be set out in legislation to make clear that such a bid is possible. State Transit supplies a much higher standard of service than private bus operators do. Its buses are generally more modern and more comfortable. Many of them use natural gas, resulting in a low level of pollution. The present standard of bus services in western Sydney supplied by private bus operators is scandalous. Time and again this is the subject of comment in the media in western Sydney. Something needs to be done about it. There is little or no regard for the transport needs of the population. Instead, bus barons concentrate on collecting revenue from the school student transport subsidies to keep them in business. It is time western Sydney was opened up to a bus system that is focused on the needs of the passengers and the community.

To the Government's credit, in 1999 it purchased North and Western Line and has run government buses into Parramatta. This is an excellent first step and we applaud it. The Greens amendment will extend that good work and allow State Transit to bid for contract services. The Greens believe this is an important step in ensuring that the people of western Sydney receive the sort of transport services that only publicly-owned operators are capable of and interested in delivering. If State Transit can bid for the right to run services on this transitway we have a real chance of improving services in western Sydney. I commend the Greens amendment to the Committee.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.02 p.m.]: The Government does not oppose this amendment. We do not believe it is necessary, because section 24 of the Transport Administration Act already gives State Transit the ability to bid for the service contract. However, as I said, the Government does not oppose the amendment.

**The Hon. JOHN JOBLING** [4.03 p.m.]: The Opposition is somewhat concerned about the amendment. We are concerned that allowing State Transit to bid for the service contract might be a de facto move by the authority to take over the existing contracts and the private contractors. However, as the Government has indicated it will accept the amendment, it should have considered the ramifications, and we will see what the Committee does.

**The Hon. RICHARD JONES** [4.03 p.m.]: I support the amendment of Ms Lee Rhiannon. It is clear that at present State Transit can bid for a contract, but the amendment will make sure that provision is in legislation. It may be that under a conservative government State Transit would not have been able to bid and would have been excluded from the process. I am glad this amendment has been accepted because it will make absolutely certain that State Transit is able to bid for a contract.

**Amendment agreed to.**

**Ms LEE RHIANNON** [4.04 p.m.]: I seek leave to move Greens amendments Nos 2 and 4 in globo.

**Leave not granted.**

I move Greens amendment No. 2:

No. 2 Page 5, schedule 1 [10], proposed section 28C. Insert after line 5:

- (2) Without limiting subsection (1), it is a performance standard of a service contract that, within 4 years after the service contract is entered into, all of the buses conducting the service can only be powered by one or more of the following means:
  - (a) natural gas,
  - (b) electricity,
  - (c) non-diesel fuel that has low greenhouse gas emissions or other low air pollution emissions.

This amendment is about penalties for failure to comply with performance standards. As the bill stands, failure to provide transitway services at the contracted standard will result only in a civil penalty, as specified in the contract. The Greens believe this is totally inadequate. The lack of legislative penalties for the failure to provide other transport services provided by private operators has led to the existing appalling standard of bus services in western Sydney. The Greens amendment will create legislative penalties of 1,000 penalty units—or \$110,000 at the current penalty unit value—for each failure to provide the contract of service standard. This will ensure compliance with the standards. I commend the amendment to the Committee.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.06 p.m.]: The Government does not support this amendment. The amendment does not achieve the intent of imposing penalties linked to performance. Imposing penalties within the contract will permit a combination of discretionary and performance-based measures. New section 28A to be inserted by schedule 1 [10] of the transitways bill will ensure that penalties for breach of contract are enforceable by statute rather than at common law only. This means that the common law can be overridden when necessary to ensure that civil penalties for withdrawal of contractual payments properly meet the seriousness of any breach of contract. The Government considers the amendment is not as strong as new section 28A as currently drafted, and is unnecessary.

**Amendment negatived.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [4.07 p.m.]: I move:

Page 5, schedule 1 [10], proposed section 28C. Insert after line 5:

- (2) Without limiting subsection (1), a service contract is to provide that it is a performance standard that the operator of the service must ensure that pollution levels are as low as the European standards current at the time of the contract and incorporating any improvements in the standard as they become extant during the contract period.

**Mr. Duncan Gay:** Has this changed amendment been passed by Parliamentary Counsel following examination of the ramifications?

**The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin):** Order! It is before Parliamentary Counsel.

**The Hon. Duncan Gay:** It is, or it has been?

**The TEMPORARY CHAIRMAN:** It has been to Parliamentary Counsel and is on its way back. It contained a scientific error that has been corrected.

**The Hon. JOHN TINGLE** [4.10 p.m.]: I seek clarification. Following on from what the Deputy Leader of the Opposition said, if Parliamentary Counsel chooses to alter the wording we may be voting on wording that is different in its final form. For instance, I wondered whether the Hon. Dr Arthur Chesterfield-Evans really wanted to say that pollution levels are "as low as" European standards? Would he prefer to say that they are "no higher than" European standards? Legally there is a difference and one may be enforceable and the other may not. This needs to be clarified.

**The Hon. JOHN JOBLING** [4.11 p.m.]: I seek clarification, and this is almost a point of order. It is improper that this Committee should be asked to consider an amendment given verbally at this stage without the

opportunity to consider the ramifications and implications of the precise words. The words "as low as" and the words "to the minimum standard or maximum standard" have been questioned. It should concern the Government that in order to absorb those words an examination of the differences between Australian and European standards for emissions is raised at this stage.

On a point of order: I suggest that as the written amendment is not before the Committee at the moment, the honourable member cannot proceed with his amendment.

**The Hon. Dr Arthur Chesterfield-Evans:** To the point of order: Frequently the Committee passes cumulative amendments verbally or in writing.

**The Hon. Duncan Gay:** We do not.

**The Hon. Dr Arthur Chesterfield-Evans:** We frequently negotiate deals and come to conclusions with massive implications for the Parliament of far greater moment than the words "as low as" or "no higher than". I am certain that either wording would be perfectly adequate and I expect Parliamentary Counsel to supply the written amendment at any moment.

**Ms Lee Rhiannon:** To the point of order: From what I have observed in Committee it is possible to amend amendments. I have done it in the past and my recollection is that Coalition members did so in the long debate on workers compensation. I have done it now, in consultation with the Clerk. On many occasions members have found themselves in this situation in Committee. It is quite unfair to take this point of order. I know we are all tired after last week's long sittings, and maybe some memories are short.

**The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin):** Order! Many honourable members want to contribute to the point of order, but I will rule on it. There is no point of order. It is best to avoid moving an amendment to an amendment verbally. The better course is to circulate the amendment in writing, because some honourable members may not have not seen it. Although it is acceptable on occasions to amend an amendment verbally, it is not the practice. The Parliamentary Counsel is simply an adviser, and his advice does not have any bearing on whether a member can move an amendment or not.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I take your point, but I believe we should be able to move anything we like in Committee, and if it is wrong, it is on our heads. Your ruling has affirmed that view. I apologise to the Committee that the amendment has been changed at this late stage. I was not aware that that was the situation. The amendment simply sets a performance standard. The circulated amendment contained a specification for electric powered or non-diesel fuel buses. I do not think legislation should specify a technology, but it should specify direction and performance. If technology changes direction to fuel cells or something else, it would not be wise to have legislation specifying only gas, electricity or non-diesel fuel. However, the fuel should be to a standard that gives a good air quality.

The Europeans have worked very hard on this and have new diesel technology that allows for extremely low emissions, as good as or better than from natural gas. One problem with electric power from coal-fired generators is that it produces greenhouse emissions, although not at the point at which electric-powered buses operate. The amendment is an attempt to reach the European standard, but I will not belabour the point. I understand that my amendment does not have the support of all parties, so I will not push it.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.16 p.m.]: I echo the sensible comments of the honourable member. The Government does not support the amendment. In my contribution to the second reading debate I indicated that the Government would promote the ongoing use of environmentally friendly buses available for use on the transitway system. I gave some details that prospective contractors would need to select environmentally friendly buses.

Imposing a requirement on bus operators to upgrade any proportion of their fleet to electric or other non-diesel fuel within five years is likely to have significant cost burdens on operators during their contracts, which are likely to be more than five years. This requirement, and its associated costs, may drive existing operators who were able to operate on segments of the transitway out of business. The Government does not believe that the amendment is necessary, as stated in the contributions to the second reading debate. The Government does not support the amendment.

**The Hon. JOHN JOBLING** [4.17 p.m.]: The Opposition does not support the amendment. I concur with the comments about the five-year period. It is very difficult to enter into a contract that says that one must

do certain things that come into force. The task will become even more complex if verbal amendments allow current European standards to be introduced during the life of a contract. That would have an enormous effect on transport, bus and coach operators. What are the exacting European standards at the moment? How will they effect New South Wales and Australian standards? What are the standards in the United States of America? Are we going to pluck out of the air, at no notice, a standard that says this is good, and this is what we must have?

We need to know the impact of the standard on buses, and what impact it will have on costs and many other things. I would concur that in some cases the standards are more stringent and tighter in relation to fuel and emissions including diesel and petroleum products. We are moving in that direction, but requiring that a standard must apply now would be impractical. The Opposition does not support this undesirable amendment.

**The Hon. Dr PETER WONG** [4.19 p.m.]: I was assured by the Minister's adviser during today's consultation that the Government intends to adhere to the strict guidelines that the pollution levels would match the European standards. In the spirit of co-operation I wonder whether the Government could accept an amendment that states that the pollution level should be "as low as" the European standard at this time, and forget about the future. That would demonstrate the Government's commitment to low pollution levels.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.19 p.m.]: In response to the comments of the Hon. Dr Peter Wong, the Government made quite clear its commitment to environmental standards in the second reading debate. The Government's concern about this amendment relates to the five-year period and that is clearly on the record. In my contribution to the second reading debate I said that the Government is particularly concerned that imposing a requirement on bus operators to upgrade any proportion of its fleet within five years is likely to have significant cost burdens. The combination of those two factors led the Government to oppose the amendment.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [4.19 p.m.]: The Minister has clearly indicated the need for this amendment. Ms Lee Rhiannon made the point when speaking to her first amendment about State Transit being able to bid for transitway contracts. State Transit maintains a far more modern and non-polluting fleet than those run by private bus operators. Western Sydney Buses has been sold to National Express, an English bus company, which has imported buses that do not meet European standards. The dumping of secondhand buses in Australia brings third-world conditions to this country, and that is wrong. Some time ago I asked questions on this subject in the House. Western Sydney Buses is the largest operator but its buses do not meet European standards. We will continue to have those buses as sure as God made little green apples. It is all very well for the Minister to say that everything will be fine in five years. The life of a bus, particularly in western Sydney, is much more than five years. The buses will be used for much longer than five years.

**The Hon. Duncan Gay**: The average is 12 years.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS**: That may well be, although I would be surprised if it is not longer than that. These buses will be operated with five-year contracts. I accept the Minister's point that they will be cheaper to run and that cost is the main reason operators do not replace their buses. However, they will bring more pollution. The European diesel standards can improve the situation. Although retrofitting is probably uneconomical, it may be cheaper to retrofit the new fuel injection technology to lessen pollution from buses. However, I note that the State Government has seen fit not to do that with the ferries, despite my repeated requests. It is all very well to be mealy-mouthed about costs, but if the Government will not commit itself to the European standards now, we are likely to have pollution for some considerable time in the future.

**Ms LEE RHIANNON** [4.22 p.m.]: The Greens support the amendment. In Sydney an increasing number of people are afflicted by respiratory disease, which affects the young and the elderly, in particular. Most honourable members grew up at a time when asthma was quite rare. These days it is extremely common. Figures show that one in five primary school age children has respiratory disease, largely as a result of transport emissions. There has been a clear time frame for the environmentally friendly buses about which the Minister spoke. Diesels play a key role because of the PM10 and PM3 particles they emit, which are a key factor in many of the respiratory diseases affecting people across Sydney, particularly western Sydney, which does not have the same air movements, allowing polluted air to just hang. This is an important amendment.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [4.23 p.m.]: I was not going to contribute to the debate because I thought there was sufficient bunkum already. However, two points need to be

corrected. The first is that the Hon. Dr Arthur Chesterfield-Evans suggested that buses would be around for 25 years. That is absolute bunkum. The average age of the fleet can be no more than 12 years, so no operator will keep a bus for 25 years and risk his fleet. Ms Lee Rhiannon said that air quality was better when she was young. I checked the parliamentary record and it shows she and I are of similar age. There were still steam trains in Sydney when we were young. I went to school in the inner west in the early 1960s and a haze of smoke hung over the school from the steam trains. It is certainly a lot better than back then. Stop trying to kid us.

**Amendment negatived.**

**Ms LEE RHIANNON** [4.25 p.m.]: I move Greens amendment No. 3:

No. 3 Page 5, schedule 1 [10], proposed section 28C, lines 6 to 15. Omit all words on those lines. Insert instead:

- (2) The operator of the service must comply with the performance standards provided for in the service contract.  
Maximum penalty: 1,000 penalty units.

This amendment provides a way of cleaning up our air. Natural gas ethanol or electric-powered vehicles do not emit particles and obviously will produce lower volumes of greenhouse gases. These fuels could help clean up the lungs of western Sydney, and I imagine even the Deputy Leader of the Opposition would agree with that. The Minister made a commitment in the second reading speech to promote environmentally friendly fuels through the tendering and contracting process. This is an excellent statement of intent but much less than the commitment that this amendment will provide. I move the amendment to strengthen the commitment by the Minister and I commend it to the Committee.

**The Hon. JOHN JOBLING** [4.26 p.m.]: The Opposition does not support the amendment. To state that a service contract cannot make provision for a bus to use a transit route unless the bus is powered by natural gas may be desirable and may well come to pass in the future—indeed, the State has an increasing number of buses that are powered by compressed natural gas—but it is unreasonable and undesirable to insert such an amendment in the bill at this stage.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.27 p.m.]: The Government does not support the amendment. The Government supports any measures to ensure that buses used on the transitway meet the most appropriate environmental standards. The Government is concerned that restricting buses to the use of natural gas may not actually achieve those standards. The pace and nature of technological advances mean that the environmental friendliness of natural gas buses may be surpassed by other technologies. Accordingly, the Government does not support an amendment that may restrict its flexibility to attract state-of-the-art, environmentally clean buses into the future that may not necessarily be powered by natural gas. The Government intends to impose the highest environmental standards on operators who win the right to operate trunk routes on transitways in accordance with relevant Australian standards that will progressively raise air quality standards.

**The Hon. RICHARD JONES** [4.28 p.m.]: I support the amendment. Where possible we should ensure that we have the best technology to produce the best results with the cleanest air. The people of Sydney have a right to breathe clean air. I understand why the Government will not accept the amendment, but I urge the Minister to ensure that any buses purchased in future have the best technology for reducing air pollution, in particular, PM2.5, which is the number one cause of death related to air pollution within the city of Sydney.

**The Hon. Duncan Gay**: Federal guidelines override this.

**The Hon. RICHARD JONES**: There are no Federal guidelines on PM2.5 yet. A goal is being produced right at this moment, which will be stringent, according to the American guidelines. Unfortunately, new vehicles produce considerable PM2.5. I hope the Minister will have regard to the emissions of PM10 and PM2.5 in particular in any buses that are used on transitways.

**Amendment negatived.**

**Ms LEE RHIANNON** [4.29 p.m.]: I move Greens amendment No. 4:

No. 4 Page 5, schedule 1 [10]. Insert after line 22:

**28E Community consultation process**

Before making provision in a service contract for performance standards, or before renewing a service contract, the Director-General is required to carry out a community consultation process in relation to the proposed performance standards or renewal.

This amendment deals with the all-important issue of consultation. As I said earlier, I note the Minister's comments, which were most welcome, about the Government's acknowledging the need for consultation. However, without appropriate legislative protection with regard to penalties and consultation the people of Western Sydney will have no mechanism by which to improve the level of service. The Greens argue that we need to put this protection in place if the level of service that people receive from private bus companies is to be improved, because past experience demonstrates that if there is no legislative protection there will not be an improved level of service. I commend the amendment to the Committee.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.30 p.m.]: Although the Government is sympathetic to the aims that Ms Lee Rhiannon is trying to achieve with this amendment, it does not support it, simply because we do not believe it is necessary. The performance standards that will be incorporated into each bus service contract will be prepared on the basis of existing community consultation conducted by the Department of Transport.

The Department of Transport already has processes in place to seek the views of commuters and the community in relation to the performance requirements of bus operators. The department intends to engage the community when determining the required performance standards for transitway operators. It is important that the development of performance standards for contracts with different transitways is consistent. Given that there will be seven transitway contracts in the planned transitway network, the proposed amendment will potentially create a framework for inconsistency and lead to considerable administrative costs. I again emphasise that the Government is committed to ensuring that commuters are properly consulted, but it prefers a more flexible process.

**The Hon. JOHN JOBLING** [4.31 p.m.]: Obviously consultation is desirable. The Opposition clearly understands where the Greens are coming from with this amendment, and, indeed, has a degree of sympathy for the proposition they put before the Committee with regard to the amendment. However, as the Government points out, there are various contracts and consultation could be protracted and quite difficult, although I am unsure how they will interrelate. At this stage the Opposition is not prepared to support the amendment.

**Amendment negatived.**

**The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin)**: Order! I am advised that Ms Lee Rhiannon wishes to amend Greens amendment No. 5 as circulated. Has the amended amendment been circulated?

**Ms LEE RHIANNON** [4.33 p.m.]: No. The changes are quite simple, if I could read the amendment.

**The TEMPORARY CHAIRMAN**: Is it possible to circulate the amended amendment while you read it?

**Ms LEE RHIANNON**: Not with my writing on it.

**The Hon. JOHN JOBLING** [4.33 p.m.]: As we have not seen the amended amendment, it is very difficult for the Opposition. Frankly, the practice of introducing an amended amendment at this stage concerns me. What is the basis of circulating amendments at all? We might as well never circulate them. I do not know what Ms Lee Rhiannon is going to say. It may well be that the Opposition will support it. However, we would have appreciated the opportunity to at least have a few minutes to see it.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.34 p.m.]: I understand that the changes are not significant and I suggest that Ms Lee Rhiannon should read the amended amendment. While this situation is not ideal, in the past amendments have been changed at the last moment. If Ms Lee Rhiannon reads the changes, that might put everyone's mind at ease.

**Ms LEE RHIANNON**: I apologise for any inconvenience this has caused. They are minor changes. I will outline them briefly and then read the amendment in full. The first change deletes the word "independent" in clause (2) (a). The second change replaces clause (2) (c) with the following:

- (c) the details of the study has been laid upon the table of each House of Parliament.



I move Greens amendment No. 5, which now reads:

No. 5 Page 6, schedule 1 [10], proposed section 28G. Insert after line 14:

- (2) The Director-General must not determine or vary a transitway route unless:
  - (a) a study has been conducted to determine whether any parts of the transitway or proposed transitway that have not previously been used as a road would be suitable for use for the purpose of light rail, and
  - (b) the study has found that those parts of the transitway or proposed transitway would be suitable for that purpose, and
  - (c) the details of the study have been laid upon the table of each House of Parliament.

The amendment relates to transitway roads and the possibility of their being converted to light rail. The amendment ensures that all purpose-built sections of the transitway will be suitable for conversion to light rail. Obviously I am referring to grades and curves, and to consideration being given to them during the construction period so that conversion is possible. Given international experience, it is unlikely that buses could provide sufficiently attractive levels of service on long-haul routes to cause modal shifts in favour of public transport. It is therefore important that the public investment in transitways is not wasted and that they can be easily converted to a more attractive form of public transport.

The Greens maintain that the most sensible course of action is to move immediately to fixed rail. Despite its higher capital cost, light rail would attract passengers. It would provide the mobility standards and the level of comfort that the people of western Sydney deserve, and it would certainly help to solve the air pollution problems in that part of our city. However, if we are not to move to light rail, we should at least legislate to guarantee that when the transitway fails to attract passengers and reduce private vehicle use—and we must remember that that has been the overseas experience—the people of Western Sydney will have an easy conversion to light rail because the legislative process will facilitate that.

Again we note and welcome what the Minister said in her second reading speech. However, based on past experience the Greens argue that this is not enough. The people of Western Sydney need to know that one day they will be relieved of the discomfort and difficulty of travelling to and from work, and that that relief will be provided easily, without any roadblocks, so to speak. The amendment would provide that guarantee and would protect the public investment that will obviously be made in these transitways, and thus help to ensure that the money spent on the transit ways will not be wasted.

I pay tribute to the work of the Better Western Sydney Committee, which has helped the Greens to formulate many of these amendments. I particularly thank the committee's spokesperson, Neil Parker, who has dedicated so much of his time to highlighting the benefits of light rail. For the benefit of members I should like to place on record some of Mr Parker's comments. He has said:

A light rail system lifts the public transport profile and attracts users. It has an important impact on the use of land, and creates a greater market for its self as confidence in the system grows. It is capable of providing service equal to or better than conventional railways, at a much lower cost and with less environmental impact. Both heavy rail and railway systems have a relatively high noise generation level compared to the light rail system. Indications are that introduction of a light rail system instead of a busway would attract 10 percent more passengers immediately and patronage would be expected to increase by 20 per cent per annum, in line with the US, Canada and European experience, where light rail has been introduced.

That sums up the benefits of light rail. As Mr Parker succinctly put it: it creates a market for itself as confidence in the system grows. This amendment will provide the mechanism for that growth in confidence, and I commend it to the Committee.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.39 p.m.]: The Government supports Greens amendment No. 5. As we have said, transitways are being constructed to allow for the use of light rail. This is being done on the basis of established engineering standards for road-based construction and the provision of station facilities with dual purposes.

**The Hon. JOHN JOBLING** [4.40 p.m.]: The Opposition notes the Government's support for Greens amendment No. 5. However, I must reiterate my earlier comments and express concern about an amendment coming before the Committee at this late stage. That makes a mockery of the system, because it is very difficult for the Opposition to consider late or uncirculated amendments reasonably. The Government may have had advance knowledge of this amendment—so be it. The Opposition is concerned about the removal of the word

"independent". Who will then be responsible for conducting that study? Will it be conducted by a specialised organisation or group, or by somebody from within State Rail or the bus transport sector? Will that process be public and who will have the right to appear before the inquiry? If this amendment is passed, there will be nothing to stop the Government from conducting its own survey of itself.

The question of whether a transitway may become suitable for conversion for light rail—while that may be a desirable outcome—is hypothetical at this stage. We simply do not know what will happen in the future if transitways cease to operate with bus transport. What will happen if the transitways fail and the light rail option is not appropriate? It is clearly not intended that transitways revert to use as roadways—I think that is implicit both in this amendment and in the next amendment that we shall consider.

The study must be laid on the tables of both Houses of Parliament. Although that goal is highly desirable, there is no suggestion that Parliament will do anything more than simply note that fact. The amendment fails to deal with what happens if Parliament agrees or disagrees with the outcomes of the study. The Government has indicated that it will support the amendment, so the Opposition simply places on record the problems it envisages with this amendment.

**Amendment agreed to.**

**Ms LEE RHIANNON** [4.44 p.m.]: I move Greens amendment No. 6:

No. 6 Page 6, schedule 1 [10]. Insert after line 35:

**28H Purpose-built transitways cannot be converted into roads for private vehicle use**

If the whole or any part of a transitway route consists of a road that was not, before the determination of the transitway route, used to carry private vehicles, that road cannot be used at any time to carry private vehicles (including when the transitway route is abolished).

This amendment concerns the very important issue of ensuring that transitways cannot be used for private vehicle traffic at some later date. International experience has shown that that can happen and, although we have been assured that it will not occur in this case, it is best to provide for this in the legislation. The Greens argue that if transitways run into problems—and that can happen—they must be maintained for public transport and not become motorways or freeways for use by private vehicles.

International experience strongly suggests that transitways will fail to produce the expected outcomes and, when that happens, pressure is likely to be applied—particularly by the motorway lobby—for their conversion to roadways. We could see the growth in motorways by stealth, and this amendment offers protection against that outcome. I commend the amendment to the Committee.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.46 p.m.]: The Government does not support Greens amendment No. 6. The Government intends to prohibit private vehicle traffic on purpose-built transitways. However, the amendment precludes the conversion of dedicated transitway lanes on existing roads back to roads for private vehicle use in circumstances where alternative public transport options become available.

The amendment restricts the Government's flexibility to plan, develop and revise integrated public and private transport options to meet the future demands of the community, which are subject to population growth and the development of employment and education centres. For these reasons, the Government rejects the amendment.

**The Hon. JOHN JOBLING** [4.46 p.m.]: For similar reasons, the Opposition also does not support the amendment.

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

**The Committee divided.**

**Ayes, 6**

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

**Noes, 25**

Ms Burnswoods	Mr Harwin	Mr Ryan
Mr Colless	Mr Johnson	Ms Tebbutt
Mr Della Bosca	Mr M. I. Jones	Mr Tingle
Mr Dyer	Mr Lynn	Mr Tsang
Ms Fazio	Mr Moppett	Mr West
Mrs Forsythe	Mrs Nile	
Mr Gallacher	Reverend Nile	<i>Tellers,</i>
Miss Gardiner	Mr Oldfield	Mr Jobling
Mr Gay	Mr Pearce	Mr Primrose

**Question resolved in the negative.**

**Amendment negatived.**

**The Hon. JOHN JOBLING** [4.53 p.m.]: I move the Opposition amendment:

Pages 9 and 10, schedule 1 [13], line 9 on page 9 to line 28 on page 10. Omit all words on those lines.

This section deals with the heart of the Opposition's objection: that no compensation is payable to or by any person for loss or damage arising directly or indirectly from a specified list of circumstances. The Opposition believes that that is improper, immoral and incorrect. We draw the attention of honourable members to the ruling of Justice Rolfe in the Supreme Court that the department's action in the Oliveri case was not legal because the department "cannot take away services without providing other services in substitution therefor". That was a matter of equity.

The Opposition's amendment will correct the error in the bill, which, as it stands, aims to override the Equity Division of the Supreme Court and refuse compensation for bus contract holders who have made substantial investments, about which I spoke in the second reading debate, in order to retain their guaranteed revenues under the contract, and who will be deprived of their previously guaranteed revenue streams. In many instances that could cause smaller bus and coach companies to become insolvent. This matter is of critical importance to the Opposition. The Opposition believes that the concept of no compensation or expropriation of property, as it may be determined, is wrong. Therefore the Opposition opposes the amendment and will divide on it.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.56 p.m.]: The Government does not support the Opposition's amendment. As I said in my reply to the second reading debate, we simply do not believe it is correct to characterise this issue as taking away something that has been previously given. That is just not the case. Transitways is a new service designed to attract more people onto public transport and away from private vehicle use in Western Sydney. New trunk express and stopping services along transitways linking key employment and commercial centres and rail stations have the potential to lift the patronage of existing bus operators. Those operators will be able to increase their services where necessary to feed commuters into 35 stations along the Liverpool to Parramatta transitway. That will occur for other transitways as well.

Existing operators may be able to operate on segments of the transitways, within their exclusive contract areas, thereby taking advantage of the Government's \$800 million investment in a new public transport corridor. Existing contract holders can tender for up to eight transitway service contracts. There are 19 contract holders along the transit lane network in Western Sydney. Their contracts are automatically renewed every five years, and this provides them with long-standing monopolies in their exclusive contract areas. That was the effect of the Coalition's 1990 legislation.

Bus operators currently rely on funding from government subsidies under the School Subsidy Transport Scheme [SSTS] and half fare concession schemes for pensioners—a total of \$14.4 million for the five contracts along the Liverpool to Parramatta transitway. Because of monopoly rights and reliance on SSTS compared with the State Transit Authority [STA]—which has increased bus patronage in the area formerly covered by North and Western by 7.5 per cent in 12 months—bus operators tend not to review and improve their services to better meet customer demand. That is a finding of the STA's review of customer needs and demands, and targeting its services to satisfy customer needs.

Entitling those contract holders to compensation, as the Opposition wants to do through its amendment, because the Government is providing a new service at a cost of \$800 million, would tie up the Government in costly litigation and add millions of dollars to the project. The Government may be forced to review the project. Buying out existing contracts is not an option because the cost is prohibitive. The cost of purchasing North and Western was about \$22 million.

*[Interruption]*

It is simply not correct to characterise this as taking away something that has already been given. That is not the case. This is a new service. For those reasons the Government does not support the amendment.

**The Hon. MALCOLM JONES** [5.00 p.m.]: If bus contract holders will benefit and derive more business from the transitway or from working in association with the transitway, then a judge would consider that. Similarly, as contract terms vary, some bus companies will have a reasonably short term before expiry of their contracts and others will have a relatively longer period. It has been argued, therefore, that the Government should not consider companies with short contract periods. Again, bus contractors must consider that when anticipating initiating a case and, similarly, a judge will consider that matter. Contract holders may operate on a transitway. If that is of benefit to them and they still wish to seek redress, again that would be determined by a judge. The private bus routes generally travel in an easterly and westerly direction, yet the transitway will run north and south. The impact of that on the bus companies, if they seek to obtain compensation in court, is, again, a matter a judge would consider.

I am appalled that Parliament would use its numbers to deny individual businesses their right to compensation. The Government will spend \$800 million to go into competition with the private bus companies. If it were not in competition, a judge would clearly see that there is no need for compensation. If there is a need for compensation, then the Government should pay. Last week when speaking to the workers compensation bill, I said that it is entirely inappropriate for a government to go into competition with ordinary citizens—in this case the proprietors and shareholders of bus companies—on advantageous terms and deny them compensation. Transitways have failed elsewhere. I hope that this transitway does not fail. However, if it does, it is highly likely that the bus companies will suffer in the process of unscrambling the mess. These matters could be determined in advance. The construction of the transitway can proceed without these matters needing to go to court first. I support the Opposition's amendment.

**The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin):** Ms Lee Rhiannon.

**Ms LEE RHIANNON** [5.02 p.m.]: Thank you, Madam Chair.

**The Hon. Duncan Gay:** Point of order: The Chairman of Committees is not referred to as Madam Chair. Under the Constitution Act of New South Wales, the position is designated as Chairman of Committees, not Chair.

**The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin):** Order! The position is designated as such under the Act. I did not take offence, but it is correct to call me Chairman.

**Ms LEE RHIANNON** [5.03 p.m.]: This amendment, if passed, would be another gift to the large bus companies. It is not surprising that it comes from the Opposition. The amendment puts the profits of the bus barons ahead of the needs of the people of western Sydney. The Greens believe that is not the way we should be heading. In many ways, this amendment seeks to win a few favours. I wonder if the Coalition should call it the "let us ingratiate ourselves with the private bus owners" amendment in the hope of gaining an increase in donations from the private bus industry. Donations have been handsome for both major parties, but particularly for the Coalition. This amendment would expose the Government to greater risk of yet more payouts to private bus operators. It would work to further erode the public transport budget, leaving less money for the public system. We need to ensure that we do not open up that possibility in any way.

One of the most positive features of this bill is the erosion of the monopoly of the private bus companies. In moving this amendment, the honourable member spoke of justice for the private bus operators. Let us remember what the people of Western Sydney have had to put up with for decades. It is hard to talk of justice when the level of service, the timetables, the state of the buses and the overall quality of the vehicles are, more often than not, appalling. The Greens have great concerns about this amendment. We call on every member, or at least a representative of the major parties, to declare on the public record categorically that their vote is not being influenced by any donation from the Bus and Coach Association.

**The Hon. John Jobling:** Point of order: We are dealing with a specific amendment. What the coach companies may or may not choose to donate is not within the ambit of the amendment. I ask that the member be drawn back to the amendment, which is quite specific.

**Ms LEE RHIANNON:** To the point of order: I understand that in Committee we can widely canvass the issue. The comments I make are most definitely relevant because of the association of the private bus industry with major political parties and their policies.

**The Hon. Duncan Gay:** To the point of order: As a former chairman of the National Party, which does not receive any money from these companies, and as leader of the National Party in this Chamber, which supports this amendment, I indicate that it is completely peripheral to this amendment whether parties receive money. I ask that the ruling on the point of order be that the information the member is seeking is beyond the leave of the bill and the amendment. The National Party does not receive any money from these organisations. I know that the Greens would not receive any money either, but I am on the opposite side. It is completely peripheral to the amendment.

**The TEMPORARY CHAIRMAN:** Order! I draw to the attention of Ms Lee Rhiannon that when in Committee dealing with amendments members must be very specific and not canvass the debate too widely. I draw the honourable member's attention to that fact and draw her back to the amendment.

**Ms LEE RHIANNON:** I note the comments that were made on the point of order about political donations. I ask clarification from the Deputy Leader of the Opposition because we have information from the State Electoral Office that in 1995 the National Party did receive—

**The TEMPORARY CHAIRMAN:** Order! That is out of order. I ask that you speak specifically to the amendment. I ask that you withdraw that statement.

**Ms LEE RHIANNON:** I withdraw that statement. I was confused. As the issue had been raised on the point of order, I thought I would be able to seek clarification about it. I urge members not to support the amendment because it would leave the public transport system open to abuse by giving more sustenance to the private bus industry.

**The Hon. JOHN JOBLING** [5.08 p.m.]: One tenders for a contract and accepts the terms and conditions of a contract. If another party wants to vary the contract, the issue of compensation arises. I suggest that if the amendment is not passed the Government can confidently look forward to a number of Supreme Court challenges, on the grounds of natural justice if nothing else. It is an equity issue. In this case, the Government is attempting to remove the rights of a person who holds a contract. I urge support for the amendment.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.09 p.m.]: I do not know whether this part of the bill is sustainable in the High Court on the grounds mentioned by the Hon. Malcolm Jones, that is, removing the rights of existing contractors. Presumably if a new road offers a new service, and a huge amount of money has been put into the infrastructure of that road, that would simply be a gift to the incumbent because of the bad wording of the contract from the beginning, which in this case was under the Coalition. Contractors are subsidised under big contracts and have the advantage of monopoly rights. That illustrates what happens when public policy is in conflict with monopoly rights that currently operate.

It may be that trunk routes that are constructed separately with the expenditure of a lot more money, particularly a trunk route involving an expensive changeover station at Parramatta, would be a massive gift to a private sector operator, if that operator were the only one advantaged by that. It may well be that an increase in bus use will result in a windfall for all bus operators in western Sydney. That would be a very desirable social outcome. Obviously if all contractors are doing better, it is important that the social benefits of an overall

planning policy not be encumbered. If the government is penalised for improving infrastructure and seeks some of its money back by tender, that would be unfortunate. I hope the Government's advice is correct, because I do not think the taxpayer should be shelling out for possible High Court challenges.

**Reverend the Hon. FRED NILE** [5.11 p.m.]: Some honourable members spoke in opposition to this Coalition amendment—which seeks to delete from the bill the provision that would insert a new section 65—because, they said, they wanted justice. If they want justice they should vote for the amendment, for justice would be achieved by leaving the matter to a court and judge to decide. This is not a handout. There is no gift to the bus companies. This provision is carefully worded to prevent justice, because it provides that "No compensation is payable to or by any person for loss or damage arising directly or indirectly from ..." The new section refers to loss or damage, not a gift or transfer of money to bus companies. The latter part of the new section which the amendment seeks to delete states:

... no proceedings for damages or other relief, whether grounded on the provisions of any contract or otherwise arising at law or inequity ... may be instituted or maintained.

It almost provides that one cannot even proceed in court, let alone succeed, for an award of legitimate damages. So the provision is retrospective and against natural justice.

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

**The Committee divided.**

**Ayes, 14**

Mr Breen	Mr M.I Jones	Mr Ryan
Mr Colless	Mr Moppett	
Mrs Forsythe	Mrs Nile	
Miss Gardiner	Reverend Nile	<i>Tellers,</i>
Mr Gay	Mr Oldfield	Mr Jobling
Mr Harwin	Mr Pearce	Mr Moppett

**Noes, 17**

Dr Burgmann	Ms Fazio	Mr Tsang
Ms Burnswoods	Mr Johnson	Mr West
Dr Chesterfield-Evans	Mr R. S. L. Jones	Dr Wong
Mr Cohen	Ms Rhiannon	<i>Tellers,</i>
Mr Della Bosca	Ms Tebbutt	Mr Macdonald
Mr Dyer	Mr Tingle	Mr Primrose

**Pairs**

Mr Gallacher	Mr Egan
Dr Pezzutti	Mr Hatzistergos
Mr Ryan	Mr Kelly
Mr Samios	Mr Obeid

**Question resolved in the negative.**

**Amendment negatived.**

**Schedule 1 as amended agreed to.**

**Title agreed to.**

**The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin):** Order! I draw the attention of honourable members to amending amendments. Members may find that their amendments are voted down simply because they are not circulated. It is good practice to circulate them beforehand, even if they are handwritten and even if they are messy. It is good practice and a courtesy to honourable members to do that beforehand. Some of the concerns raised by the Opposition are genuine.

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

**LEGAL PROFESSION AMENDMENT (PROFESSIONAL INDEMNITY INSURANCE) BILL****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), on behalf of the Hon. Michael Egan [5.22 p.m.]: I move:

That this bill be now read a second time.

The Legal Profession Amendment (Professional Indemnity Insurance) Bill has three broad purposes: first, to ensure that people who have claims against solicitors that are affected by the collapse of HIH insurance receive payment for their claims; second, to enhance scrutiny of the State, and sufficiency and management of, the Solicitors' Mutual Indemnity Fund established under the Act; and, third, to make interim arrangements for the temporary extension of the practising certificates of solicitors for 2001-2002. New South Wales solicitors were insured by HIH under an arrangement made by the Law Society in 1998. However, unlike other occupational groups, New South Wales solicitors contributed to a fund established under the Act, known as the Solicitors' Mutual Indemnity Fund [SMIF]. The fund consists of contributions made by solicitors.

The fund was originally constituted for a number of purposes, including payments of premiums for solicitors' professional indemnity insurance and payments towards the difference between the liability of a solicitor for a claim, and the amount payable under a policy. The net surplus of the fund now stands at around \$82 million. LawCover, the company that manages the fund, has now resolved to apply the fund to make payments to claimants whose claims would have been paid by HIH. The bill removes any doubt that the fund can be used for this purpose. The bill firstly provides that payments are to be made from the fund for satisfying the obligations of a member of the HIH group, under or in connection with an approved insurance policy. This provision places a clear onus on LawCover to make the payments to claimants.

I understand that LawCover proposes to enter an agreement with the provisional liquidator of HIH for the purpose of applying the fund to meet claims. The bill contemplates such an agreement. The bill also contains a special, complementary power for LawCover to require any solicitor or former solicitor who was insured under an approved policy issued by HIH to pay a special contribution or levy to the fund. This will ensure that both current and former solicitors can be required to make additional contributions to the fund in the future to cover HIH claims. The bill secondly provides that payments can be made from the fund to meet the obligations of a defaulting insurer. This is a broad provision, designed to allow payments to be made in circumstances in which an insurer is unable or unwilling to meet any claims or other liabilities under a policy, or a liquidator or provisional liquidator has been appointed, or an insurer has been dissolved.

I turn to other provisions of the bill that deal with the Solicitors' Mutual Indemnity Fund. The fund is managed by LawCover, and there is no reason to suggest that LawCover's management has been anything other than competent. However, the new uses for the fund contemplated by the bill necessitate greater scrutiny of the sufficiency of the fund and of its management. The bill provides for the Attorney General to appoint an appropriately qualified person to conduct an investigation in relation to the fund, including matters such as the adequacy of levies or contributions made by solicitors to the fund, the management and investment of the fund by LawCover, and other matters determined by the Attorney General.

Honourable members would appreciate that solicitors' practising certificates expire on 30 June, and that new practising certificates cannot be issued to insurable solicitors until indemnity arrangements are in place. The bill makes interim arrangements for the extension of practising certificates in 2001-2002. These arrangements have been included in the bill in case arrangements for professional indemnity insurance cannot be concluded in time for the normal date on which practising certificates would be issued, 1 July. Honourable members may be aware that the collapse of HIH has brought about difficulties in arranging professional indemnity insurance for solicitors in 2001-2002, as contemplated by the Act.

Honourable members will recall that the second reading speech in the other place indicated that arrangements had not yet been finalised for the provision of professional indemnity insurance for solicitors in 2001-2002. I understand that the Attorney General approved such an arrangement on Friday 29 June and solicitors will be covered by a commercial insurance policy for 2001-2002. To underpin the insurance arrangement, I understand that the Law Society has requested two further minor amendments to the Act. These amendments will permit LawCover, which manages the fund, to recover additional annual contributions to the fund in the future if it becomes necessary to meet insurance premiums. The Government supports these amendments and I take this opportunity to foreshadow that I shall move them in Committee. I commend the bill.

**The Hon. GREG PEARCE** [5.28 p.m.]: The Opposition will not oppose the legislation. In all the circumstances it is necessary. Before I continue, I should disclose that I have been a councillor of the Law Society of New South Wales, although not when the arrangements for HIH were entered into. Prior to addressing the House this evening I have not consulted with the society about the legislation. The Government said that the legislation is necessary to respond to the HIH collapse, and it justifies the legislation in terms of consumer rights and consumer protection. That is all very well and good. However, I am concerned about the obsession of this Government with bashing lawyers. I am concerned that it has taken from 15 March, when HIH collapsed, to the death knell, the last moment, to deal with this very important issue. It is outrageous that the Attorney has allowed this delay to occur. The State's solicitors did not know whether they were able to practise from 1 July with insurance in place until the Attorney, on 29 June, approved new insurance.

There was no reason for this confusion and delay. The result of that may well be that many solicitors take their insurance to other States, and solicitors' practices might be sent into insolvency. Lawyers play an important role in this State and in its economy. As I mentioned earlier, I am concerned about the obsession that this Government has with lawyer bashing. Lawyers are large employers. They provide considerable community service and they are an integral part of our legal and justice system. I state again that it is outrageous that this delay occurred, and that solicitors were left in a state of confusion and uncertainty until the eleventh hour. There is continuing uncertainty about the extension period for solicitors' practising certificates and their ongoing arrangements for insurance. The Attorney General did not explain those matters in the other House.

It is incumbent on the Government to ensure that there is a climate of certainty around this important aspect of solicitors' practices—that is, the consumer protection offered by insurance. The Opposition does not have any difficulty with the review of the Solicitors Mutual Indemnity Fund [SMIF], but one would have to ask: Why has this Government not had its eye on the ball in relation to various other issues arising from the HIH collapse? I am concerned also about the provisions in the bill that permit the imposition of a levy on solicitors, and the use of the SMIF in those areas where insurers may default. I would have thought that this fund would have been limited explicitly to those circumstances when solicitors were being sued and when insurance proceeds were being used for those actions. That levy on solicitors leads to another level of uncertainty. It will be interesting to see how the Government responds to that level of uncertainty and how solicitors are treated in the future.

**The Hon. PETER BREEN** [5.32 p.m.]: I express my grave concern about the Legal Profession Amendment (Professional Indemnity Insurance) Bill. I wish I could do so briefly, but this bill is part of a tangled web of intrigue and deception concerning the management of solicitors' professional indemnity insurance, and it has some form, so to speak. I shall refer to the history of the bill and about the way in which the Law Society has operated its professional indemnity insurance arm, LawCover Pty Ltd. Until 1978 solicitors in New South Wales were part of a voluntary insurance scheme and only about 75 per cent of solicitors took out cover. The scheme, which was run by the Law Society, was called the Solicitors Mutual Indemnity Fund. As honourable members will know, the Law Society is a two-headed creature, with one head looking over the shoulder of solicitors, as the Government's watchdog, and the other head looking in a different direction altogether, as the solicitors' trade union.

Those two heads have entirely different functions and, although they sit side by side on the body of the Law Society, I venture to say that they would not recognise each other in a crowd. The Law Society ran the Solicitors Mutual Indemnity Fund as if it were an insurance company. I recall that the operating company came into existence around 1980 and LawCover Pty Ltd received an official guernsey with the passing of the Legal Profession Act 1987. If one had the misfortune to be the victim of a solicitor's negligence, one had to battle with LawCover to get one's measure of damages, just as one is obliged to battle with any other insurance company when one wants to make a claim. Yet the Solicitors Mutual Indemnity Fund never was an insurance company and it was not bound by the rules of commerce governing other insurance providers. As its name suggests, the pool of money available to the victims of solicitors' negligence was a mutual indemnity fund.

This anomalous situation had an important consequence if one were suing a solicitor for negligence. If the solicitor went bankrupt, LawCover could argue that, because it was not an insurance company, it had no obligation to indemnify the victim of a solicitor's negligence. For many years judges hearing negligence cases against bankrupt solicitors would require a certificate from LawCover that funds were available to meet a verdict before a judge would allow a negligence case to proceed. Needless to say, getting this certificate from LawCover was like extracting teeth. If LawCover did not like the colour of one's eyes, one could whistle for one's certificate of indemnity. As recently as April 2000, in the case of *Thomas v Adam* in the New South Wales Court of Appeal, counsel for LawCover confirmed that LawCover is not truly an insurer and, on that basis, it is not bound to pay.



Then there was always the perennial question of legal costs. If one thought that one had a winning case against a solicitor for negligence and the solicitor was solvent, LawCover would wheel out its next line of defence—the defence lawyers. LawCover's defence lawyers are the best in the business, but they come at a price. Trying to negotiate with LawCover's defence lawyers is like horse trading with the Sultan of Brunei. No matter how much one offers to settle, it is always too much and the lawyers want to beat one down. The ultimate sanction, of course, is to run the case and lose, and then one is faced with LawCover's legal bill. I am reminded of the case of Dr Vere Drakeford, who sued a former President of the Law Society, Kim Garling, for negligence after Mr Garling inadvertently conveyed the wrong property.

Dr Drakeford owned two units at Kirribilli, one with a garage and one with an open car space. She instructed Mr Garling to draw a contract for the sale of one unit and the car space. Three years after the transaction was completed Dr Drakeford discovered, to her horror, that the garage had been transferred to the purchaser and not the car space. The difference in the value of the garage and the car space was \$10,000 and Dr Drakeford sued Mr Garling for that amount. LawCover defended to the death what should have been a straightforward claim and settlement. Ultimately, Dr Drakeford secured a verdict against the President of the Law Society, although the case was complicated by the purchaser of the unit being one of the parties. Dr Drakeford won the case, but her legal bill was more than \$100,000 in excess of her damages—an amount she has never recovered. The Law Society was established in 1843 and one of its objectives, as stated in the *New South Wales Solicitors Manual*, is:

To promote good feeling and fair and honourable practise amongst members of the profession so as best to preserve the interests and retain the confidence of the public in conjunction with their own just rights and privileges.

Of course, the inherent conflict in that statement speaks for itself, and reinforces the point I made earlier about the two-headed Law Society. Biblically stated, it is impossible to serve two masters. The just rights and privileges of lawyers are fundamentally at odds with preserving the interests and retaining the confidence of the public. Nowhere is this conflict more obvious than in the area of professional indemnity insurance, which is one aspect of the conduct and discipline of the legal profession. Recently the Law Reform Commission looked at the question of the conduct and discipline of the legal profession and its report has been handed to the Attorney General. I suspect that the Attorney General will keep the report in the bottom drawer until Parliament is not sitting, which is most of the time, and then the report will be released when we least expect it. I will bet good money that the report is a whitewash.

As the Canadian writer John Ralston Saul said, law reform commissions are no match for the forces ranged against them, even though the legal system is in need of a massive reform. At best, the reformers get to tinker at the edges of the legal system because essential reforms are rejected almost as soon as they are proposed. The only law reform recommendations implemented in New South Wales are those that impose tougher penalties for crime, those that impinge on the rights of an accused person to a fair trial, and those that seek to limit the role of lawyers in the legal system. This bill is one of those measures intended to limit the role of lawyers. In fact, it is worth drawing attention to the discriminatory way in which lawyers are treated under this bill when comparing their position with doctors, who were given rock solid support under the Health Care Liability Bill, which passed through this Parliament last week in the dead of night.

Under that bill, medical practitioners and others were given protection from civil liability when they are voluntarily providing health care to an injured person. The legislation also imposed certain limitations on the recovery of damages for injury or death caused by the negligence of a medical practitioner. One of the objects of the Health Care Liability Bill was expressed by the Minister in his second reading speech as, "the sustainability of medical indemnity costs". Indeed, the sustainability of medical indemnity premiums is one of the objects of the Health Care Liability Act. By way of comparison, if we look at the Legal Profession Amendment (Professional Indemnity Insurance) Bill we see that there is not one word about the sustainability of professional indemnity insurance premiums for lawyers. On the contrary, one object of the bill is to allow the Law Society-owned LawCover to levy additional premiums on solicitors to make up any shortfall in the indemnity fund. As if that was not enough, the Government put up an amendment to strengthen the position even more. Page 3 of the explanatory memorandum spells out exactly what the Law Society will do:

The company (that is to say, the Law Society owned LawCover Pty Limited) will be able to require the persons insured under an HIH group policy, or formerly insured under such policy, to pay a special annual contribution or levy to the Indemnity Fund so as to ensure that it is sufficient to meet the obligations provided for by the amendments.

My practising certificate as a solicitor in New South Wales expired last Saturday 30 June after being continuously in place for 27 years. I will not renew my practising certificate under this legislation, while the Law Society has the power to slug me an additional premium for the collapse of HIH Insurance. The Law

Society will not get one more cent from me. I would not renew my practising certificate in New South Wales under this legislation if my life depended on it! As to the situation of other solicitors who have no alternative but to renew their practising certificates, they should follow the lead of the President of the Law Society, Nick Meagher. I will come to that in a moment.

For the moment I would like to say something more about the way the Law Society deals with complaints about lawyers. The former Auditor-General, Tony Harris—who is an old mate of mine from the seminary—published a performance audit report in June 1997 about the funding of the Law Society and the Legal Services Commissioner. Honourable members may not be aware that, as well as having two heads, the Law Society also has two tails—one is the Legal Services Commissioner and the other is the Manager of the Conduct and Discipline Section of the Law Society. Like the two heads, the two tails of the Law Society would not recognise each other in a crowd, but they do share common funding—namely, interest earned on solicitors' trust accounts. This is a contentious source of funding because the money rightfully belongs to the clients. It is also a potential conflict of interest for the Law Society. Let me read what my old mate Tony Harris had to say in his performance audit report, dated June 1997:

It would also appear that there is a potential conflict of interest between the Law Society's roles as a professional body acting in the interests of its members, that of an administrator—

Might I interpose "government watchdog"—

and that of a beneficiary of money earned on clients' money.

The Audit Office considers that there is a need to establish clearer and more transparent guidelines to determine the type of expenditure that may be met from the SIA—

the solicitors interest account—

The Audit Office notes that to a large extent the STAF [Solicitors Trust Account Fund] account is used to supplement payments of accounts that are also funded from the SIA. Under these circumstances it would seem reasonable if the management of the funds were to be combined and put under the same statutory requirements.

A similar recommendation was made by the Parliamentary Committee of Public Accounts in Queensland. That Committee recommended that the function of "representing the legal profession on one hand, and managing funds on behalf of government on the other ... be separated".

This would address the concern that the Law Society is collecting interest on clients' monies which might rightfully belong to clients. Technology is at a stage where the calculation of interest earned on clients' money is easier than it may have been in the past.

The Audit Office also considers that the ownership of a company (LawCover Pty Ltd) by the Law Society that insures legal practitioners against personal liability for damages as a result of proven or admitted negligence, creates, at least the appearance of, a conflict of interest.

On the one hand the Law Society has a statutory obligation to investigate complaints and institute disciplinary procedures against solicitors suspected of misconduct. On the other hand, through LawCover Pty Ltd it has a role of defending solicitors whose negligent action may represent misconduct.

I disagree with Tony Harris that these are potential conflicts. In my experience they are actual conflicts. I once approached the Law Society about a legal action for negligence against a group of solicitors. When I asked the person at the inquiry counter for his name, I was staggered to learn that he was one of the people I was suing. Anybody who has any doubts about the conflict of interest involved in the Law Society running professional indemnity insurance need only ring the Law Society or the Legal Services Commissioner with a hypothetical situation about a solicitor acting negligently, and ask the person on the telephone what to do. I guarantee the person making the inquiry will be asked more questions than appear on a loan application for an eastern suburbs mortgage! If honourable members think it is tough as a law consumer dealing with the Law Society, they should spare a thought for the 15,000 solicitors in New South Wales trying to get their heads around the implications of this bill. They should spare a thought also for solicitors who fall out of favour with the Law Society.

One solicitor, named Joe Portale, came to see me. Mr Portale is a young bloke who practised on his own at Bondi Junction before he was experienced enough to manage his books and accounting records. The Law Society sent a receiver into his practice. The receiver removed 40 boxes of files from Mr Portale's office, and then wrote to the clients and asked them to come and collect their files. The fees in Mr Portale's files were worth around \$200,000 and he lost the lot. He then spent more than \$100,000 over six years trying to defend himself against the Law Society's charges. They took away his practising certificate on day one, six years ago, and since then he has been driving a taxi and borrowing money from his family to pay his bills. Six weeks ago

Mr Portale was struck off the roll of solicitors and he has now lodged an appeal. I will not comment on the charges levelled against Joe Portale but, having read the decision of the Administrative Decisions Tribunal and a written account of the circumstances surrounding the offences, I am alarmed at the way the Law Society conducts itself in relation to its powers under part 8 and part 8A of the Legal Profession Act.

By way of contrast to Mr Portale's case, I have received a number of complaints about another solicitor, Leon Nikolaidis, whom the Law Society has been investigating for at least eight years. I approached the Law Society about Mr Nikolaidis and the Manager of Professional Conduct quoted to me a section of the Legal Profession Act, and said he was unable to confirm or deny anything about Mr Nikolaidis. From the information I have seen, anyone who asks Leon Nikolaidis to undertake legal work does so at his or her peril, and can look forward to a long and bitter battle in the courts over exorbitant legal fees that bear no relationship to the amount of work he has undertaken. The difference between the Joe Portale case and the Leon Nikolaidis case is that the Law Society is simply a bully who intimidates and threatens its members. Those who stand up to the bully are treated favourably and with respect, and given every leniency in the book, while those who show any kind of weakness or vulnerability are attacked and beaten on the assumption of the guilty mind.

Perhaps I am exaggerating, but the point is that the Law Society often deals with its conflicting roles as lawyers' policeman and lawyers' trade union by overreacting when one solicitor goes off the rails in comparatively minor circumstances while another solicitor acts in the most appalling way with apparent impunity. In any event, I simply wanted to say something about this two-headed and double-tailed Law Society that will now have responsibility for the management of the Indemnity Fund under the Legal Profession Amendment (Professional Indemnity Insurance) Bill. The Law Society's insurance arm, LawCover Pty Ltd, is not mentioned by name in the bill. I am reminded of the John Cleese line in *Fawlty Towers*, "Don't mention the war!" Oddly enough, LawCover Pty Ltd is not mentioned in the Legal Profession Act, either. I suppose if LawCover Pty Ltd goes belly up it will be less embarrassing if its name is not mentioned in the bill.

According to an article by Chris Merritt in the *Australian Financial Review* of 15 June, LawCover has a potential shortfall of \$46 million. If one divides that by the number of solicitors in New South Wales who take out practising certificates, it works out to be a levy of about \$10,000 per solicitor. "Lawyers make plenty of money," I hear you say, "so \$10,000 is not going to break the bank." Unfortunately, the mathematics of the shortfall are not that simple. From 1 July this year—yesterday—a new policy with a company called American Re-Insurance has been taken out by LawCover. The cost of the policy is about \$90 million, which translates into about \$20,000 per legal practitioner in New South Wales who would normally be expected to take out a professional indemnity insurance policy. That is in addition to any levy suggested earlier in the Government's amendment. This is a huge hike on the existing premium and it is why people like me can no longer afford to be a solicitor in New South Wales.

I note with some concern that when we passed the Health Care Liability Bill last week, in the dead of night, the Government made a big fuss about the need to keep premiums down to avoid forcing impecunious doctors out of business. What about impecunious lawyers, is all I can say? And what about rich lawyers? The article in the *Australian Financial Review* by Chris Merritt that put the LawCover shortfall at \$46 million also pointed out that the big firms with interstate branches are simply abandoning LawCover and its massive premium increases and taking out their professional indemnity insurance elsewhere. The Government's favourite law firm, Clayton Utz, is among those firms moving their professional indemnity insurance interstate.

**The Hon. John Della Bosca:** Our Government?

**The Hon. PETER BREEN:** Yes, your Government.

**The Hon. Jan Burnswoods:** Yours too.

**The Hon. PETER BREEN:** I do not have a government. According to the legal grapevine, another firm, Sparke Helmore, is also moving its insurance interstate. That is an interesting development because Sparke Helmore is the law firm of the President of the Law Society, Mr Nick Meagher, who also happens to be the Chairman of LawCover. One of his predecessors as Chairman of LawCover was another former President of the Law Society, Ron Heinrich, who is a partner of the firm Tress Cocks and Maddox. Both these law firms—Sparke Helmore and Tress Cocks and Maddox—appear to have benefited from the positions Mr Meagher and Mr Heinrich occupied as office bearers of the company LawCover Pty Ltd. In the case of Mr Heinrich, those benefits may be still visible on the Tress Cocks and Maddox web site. LawCover, HIH, CIC and FAI insurance companies are all listed as clients of the firm. Mr Heinrich's name is listed on the page titled "The HIH TCM Team".

The question in my mind is: How did Mr Heinrich get to act for HIH Insurance when as recently as February 1997 his firm, Tress Cocks and Maddox, was acting in a Federal Court case against HIH Insurance?

Honourable members will be aware from newspaper reports that LawCover received a benefit of \$18 million from the deal between HIH and LawCover that came into effect in 1998. At the time, Mr Heinrich was both President of the Law Society and Chairman of LawCover. That was about the same time as Mr Heinrich's firm began acting for HIH Insurance. Mr Heinrich thought the deal with HIH was so good he went on a crusade to Melbourne with David Taylor, the executive head of LawCover, to attempt to convince the Law Institute of Victoria that money does grow on trees after all.

The Victorians were sensible enough to reject the HIH deal and, ironically, New South Wales law firms are now scrambling to insure themselves under the Victorian scheme following the collapse of HIH Insurance. At the time of these shenanigans in 1998, Nick Meagher was Treasurer of the Law Society and a board member of LawCover. It seems to me that Mr Meagher has the same question to answer as Mr Heinrich about the deal done with HIH Insurance in 1998. We know that the Law Society through LawCover has benefited to the tune of \$18 million from the deal. The question is: Have Mr Meagher and Mr Heinrich also benefited from any additional legal work secured by their respective law firms, Sparke Helmore and Tress Cocks and Maddox? According to published reports just four days before a provisional liquidator was appointed to work with HIH Insurance, Mr Meagher said:

There is not to my knowledge any problem with HIH policies. We (Sparke and Helmore) got a massive cheque just the other week.

The question Mr Meagher needs to answer is: Did this massive cheque, or any part of it, become due to Sparke Helmore as a result of the deal done in 1998 when LawCover directed 100 per cent of its professional indemnity insurance business to HIH Insurance? A further question for Mr Meagher is: Is his firm, Sparke Helmore, joining the exodus to Melbourne to insure with the Legal Institute of Victoria professional indemnity scheme? If the answer to either of those questions is yes, Mr Meagher needs to stand aside as President of the New South Wales Law Society and Chairman of LawCover Pty Ltd while these matters are properly investigated. Mr Meagher has an intolerable conflict of interest because decisions he has made and is about to make in a private commercial capacity have a significant impact on the premiums New South Wales solicitors will pay for professional indemnity insurance.

One of the redeeming features of this bill—perhaps its only redeeming feature—is new section 47AA, which provides for the Attorney General to appoint an appropriately qualified person to investigate the management of the indemnity fund by LawCover. This person needs to be a judge and the appropriate inquiry is a full judicial inquiry. I note that subsection (1) (d) of new section 47AA provides for the investigation to include such other matters relating to the indemnity fund as the Attorney General determines. I hope that these other matters will include investigating the benefits, if any, that flowed to Sparke Helmore and Tress Cocks and Maddox as a result of the deal done in 1998 between LawCover Pty Ltd and HIH Insurance. If these law firms did receive benefits, will Mr Heinrich and Mr Meagher refund those benefits to LawCover in the same way that the Law Society has offered to refund the \$18 million benefit it received from the deal? The 15,000 solicitors in New South Wales currently renewing their practising certificates would like to know the answer to that question, as it has serious implications for the professional indemnity insurance premium they are about to pay. I will not vote for the bill.

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.57 p.m.], in reply: I thank honourable members for their contributions to the second reading debate. I thank the Hon. Peter Breen for his stunning contribution to the debate. However, it will not deter the Government from continuing to support the bill and from putting the amendments before the Committee. The Hon. Greg Pearce alleged that the Attorney General is responsible for delays in approving professional indemnity insurance arrangements in 2001-02. I am advised that the reason for those delays is the failure of the Law Society to submit a proposal to the Attorney that complied with the Act, relevant Federal legislation and the Attorney's goal of ensuring consumer protection.

The Law Society proposals were made on 29 June and approved by the Attorney on the same day. That is a pretty quick turnaround by ministerial standards, let alone for the Attorney General, whose portfolio is heavily taxed by paperwork. The Hon. Greg Pearce also referred to the uncertainty that the bill will create for solicitors who may be required to contribute to the Solicitors Mutual Indemnity Fund at a later date. The Government takes the view that its first obligation is to protect consumers who have been left without recourse after the collapse of HIH. The solicitors have an obligation to ensure their clients receive compensation for all claims made against them. The bill achieves this goal. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clauses 1 to 3 agreed to.**

**Schedule 1**

**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) [6.01 p.m.]: I move Government amendment No. 1:

No. 1 Page 7, schedule 1. Insert after line 37:

[9] **Section 45 Contributions**

Insert "An insurable solicitor is also liable to pay to the Indemnity Fund such further amounts in respect of the annual contribution as may be determined by the company and approved by the Law Society Council." after "Council." in section 45 (1).

The amendment will enable the company that manages the fund, LawCover, with the approval of the Law Society, to impose additional amounts on insurable solicitors by way of annual contributions to the fund. It will ensure that adjustment premiums can be recovered in the future from solicitors.

**The Hon. PETER BREEN** [6.02 p.m.]: I oppose the amendment. The bill already provides for a levy to be imposed upon solicitors who are already practising and who need to renew their practising certificates. Given the figures I referred to earlier, I would suggest that the requirement of a further impost is totally inappropriate, and I urge the Committee to reject the amendment.

**Amendment agreed to.**

**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) [6.03 p.m.]: I move Government amendment No. 2:

No. 2 Page 8, schedule 1. Insert after line 6:

[11] **Section 45 (3)**

Insert "total" before "amount".

This consequential amendment will ensure that additional annual contributions imposed on insurable solicitors can be recovered from solicitors who hold a practising certificate for only part of a year.

**Amendment agreed to.**

**The Hon. PETER BREEN** [6.04 p.m.]: I will not move Reform the Legal System amendment No. 1.

**Schedule 1 as amended agreed to.**

**Title agreed to.**

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

**LEGAL PROFESSION AMENDMENT (DISCIPLINARY PROVISIONS) BILL**

**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) [6.07 p.m.]: I move:

That this bill be now read a second time.

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

**Leave granted.**

The Legal Profession Amendment (Disciplinary Proceedings) Bill 2001 is a comprehensive package of amendments to ensure that the Law Society Council, the Bar Council and the Legal Services Commissioner have adequate powers to protect the public from barristers and solicitors whose conduct indicates that they are not fit to practise.

Honourable Members will recall that I foreshadowed the introduction of this Bill in a statement to the House on 7 March 2001. In the statement, I described the Government's response to the very serious allegations made in the media about the conduct of a small number of barristers, in relation to their taxation affairs. The behaviour of these barristers is now notorious, and, according to press reports, includes failures to lodge tax returns over several years; non-payment of tax, once it has been assessed; the transfer of assets to spouses, former spouses and family trusts, apparently to escape taxation liability; and, in one case, a barrister who has never held a tax file number. A number of barristers have been bankrupt in circumstances where their only creditor is the Taxation Office. Despite their bankruptcy, they have continued to maintain a lifestyle that would be considered affluent by most people, living in waterfront houses, taking overseas holidays, and driving expensive cars.

The Australian Taxation Office is, of course, responsible for taxation matters, and it remains unclear why the ATO failed to pursue the barristers concerned, or to raise the problem with me or my Department, as the agency responsible for the administration of the laws governing the profession. All legal practitioners must be people of good fame and character and adhere to the highest moral and ethical standards in both their professional life and their private affairs.

Once I became aware of the allegations, I acted quickly to ensure that the public is protected from such conduct by members of the legal profession. A Regulation was gazetted on 9 March 2001, to impose on solicitors and barristers an ongoing obligation to disclose to the Law Society Council and the Bar Council respectively, the commission of acts of bankruptcy or indictable offences.

The amendments before the House have been drafted to complement the approach taken in the regulation, and will ensure that the Councils have a range of options to act against such practitioners. The amendments to the Act set out in the Bill demonstrate the seriousness of the Government's commitment to ensuring that the reputation of the legal profession is not compromised by practitioners who treat their legal obligations with disdain.

I now turn to the content of the Bill. The Bill firstly amends the licensing provisions of the Act, to require a practitioner who commits an act of bankruptcy or who has been found guilty convicted of an indictable offence or a tax offence to show cause why he or she is a fit and proper person to hold a practising certificate. The Bill places an obligation on the Law Society Council (in the case of solicitors) or the Bar Council (in the case of barristers) to suspend, cancel or not issue a practising certificate to a such a person if the Council is satisfied that the act of bankruptcy, or indictable offence or tax offence were committed in circumstances that show that the person is not a fit a proper person to hold a practising certificate.

In addition, the Councils will have new, express powers to refuse to issue or take away the practising certificate of a person who fails to notify certain matters without reasonable excuse; does not show cause to the satisfaction of the Council; or who fails to provide additional information requested by the Councils.

I anticipate that these new powers will make it easier for the Councils to act against practitioners who have failed to pay their tax debts, or who have committed serious offences.

The Bill also confers new powers on the Legal Services Commissioner in relation to dealing with practitioners who have committed acts of bankruptcy, or who have been the subject of findings of guilt for indictable offences or tax offences. The Commissioner will be able to take over from a Council its consideration of whether such a practitioner should hold, or continue to hold, a practising certificate, at any time. Further, the Bill requires the Commissioner to take over a matter if a Council has not made a determination about the fitness of the practitioner to hold a practising certificate within 3 months of being notified of the act of bankruptcy, or the finding of guilt, or when the Council receives notice of the event, unless the Commissioner agrees to extend the period by one month.

If the Commissioner takes over a matter, the Commissioner will stand in the shoes of the relevant Council and will have the powers to suspend or cancel practising certificates, and will be able to direct the relevant Council to refuse to issue a practising certificate to the practitioner concerned.

Both the Commissioner and the Councils will have considerable powers to investigate the conduct of practitioners surrounding the bankruptcy or offence. The powers in the Bill are modelled on the existing powers in the Act for the investigation of complaints under Part 10.

The Bill also gives the Legal Services Commissioner and the Legal Profession Advisory Council new powers to oversee rule making by the Councils. The Councils will be obliged to give the Commissioner and the Council 28 days' notice of the making of a rule, unless it is urgent, so that they have an opportunity to make representations concerning the rule. The Commissioner can also ask the Council to review any rule, and at the conclusion of the review, report to the Attorney General. The Attorney General will then have the power to declare a rule to be inoperative if it is not in the public interest.

The Legal Services Commissioner will also have new powers to monitor the licensing activities of the Councils under Part 3 of the Act. The Councils, for example, will be required to advise him of what notifications have been made by practitioners who are bankrupt or who have been subject to findings of guilt for indictable offences or tax offences. This information can be used by the Commissioner, among other things, to consider taking disciplinary action using his powers under Part 10 of the Act.

The Commissioner will also have a power to monitor generally the exercise of regulatory functions by the Bar Council and the Law Society Council, other than the imposition of conditions on practising certificates.

The Commissioner will be empowered to report to the Parliament on the exercise of his new functions.

The Bill amends the definition of professional misconduct in the Act, to remove any doubt that the conduct of a legal practitioner involving an act of bankruptcy, or the commission of an indictable offence or a tax offence is professional misconduct if the conduct would justify a finding that the legal practitioner is not of good fame and character or is not a fit and proper person to remain on the roll of legal practitioners. This amendment will apply to conduct that occurs before or after the commencement of the provision.

The amendments also introduce a new power for regulations to be made, to declare any breach of the Act or the Regulations to be professional misconduct. This new power can be used to target specific shortcomings within the profession, and will enhance the powers of the Commissioner and the Councils to act against miscreant practitioners for specific breaches.

Finally, the Bill amends the Administrative Decisions Tribunal Act 1997, to confer on the President of the Administrative Decisions Tribunal a new discretion to vary the composition of panels which deal with legal profession disciplinary matters. The President will now be able to select a panel of between 2 and 4 members from a pool of judges, legal practitioners, and lay members, provided that any panel must have at least one lay member and a panel of 4 members must have at least 2 lay members. The object of this change is to ensure that in serious disciplinary matters, a Judge presides over the deliberations of the Tribunal, instead of a practising lawyer, as at present. This will enhance public confidence in the objectivity of the disciplinary system.

I am confident that the changes to the system for disciplining practitioners, rule making and the composition of the Tribunal will enhance public confidence in the integrity of the system of the regulation of the legal profession.

I commend the Bill.

**The Hon. JOHN RYAN** [6.07 p.m.]: I lead for the Opposition on this bill. The member who would normally lead for the Opposition, the Hon. Greg Pearce, is at present involved in the estimates committee hearing examining the expenditure of the Premier. Since the Opposition wanted its best team on the paddock in that regard, the honourable member has been called away and he has left me to deal with this bill.

The Coalition has no objection to this legislation. We accept that the community has been outraged by the activities of a few—and we emphasise "a few"—legal practitioners. The overwhelming majority of solicitors and barristers are people of excellent character and are worthy of their high repute in the community. Both the Bar Association and the Law Society, in the great traditions of their associations, have taken strong action to uphold the integrity of their members and both associations are genuinely sympathetic to the legislation. However, the Law Society has raised one concern. The Opposition believed the matter to be worthy of further consideration and, when the bill was debated in another place, suggested that the Government might consider amending new section 38FC (2) to provide a 14-day notification period rather than a seven-day notification period relating to appeals on technical grounds.

The concern raised by the Law Society relates to the fact that it is often necessary for the society to consider a significant amount of material, given the amount of paperwork that is generated from its potential 16,000 members. The society believes it would make better use of a 14-day notification period rather than a seven-day notification period in order to make a determination. The Opposition regards that as a reasonable argument, and asks the Government to consider accepting such an amendment. In order to facilitate the amendment, the Opposition foreshadows that it proposes to move an amendment to schedule 1 in Committee. Apart from that aspect, the Opposition commends the bill to the House.

**The Hon. IAN COHEN** [6.09 p.m.]: On behalf of the Greens I support the Legal Profession Amendment (Disciplinary Proceedings) Bill. This bill stems from a *Sydney Morning Herald* investigation into bankrupt barristers in February this year. At the outset I pay tribute to the investigative skills of Paul Barry, the journalist who conducted the investigation; it was a fine piece of investigative journalism. He did an extraordinary amount of work to get the story. On 27 February he described how he obtained a list of 3,000 bankruptcy actions brought by the Deputy Commissioner of Taxation since 1997 which he compared to a list of barristers practising in New South Wales. He then cross-checked the results with the National Personal Insolvency Index, which identifies all past and present bankrupts. Finally, he examined the barristers' bankruptcy files, which are on the public record.

On 26 February the *Sydney Morning Herald* referred to four bankrupt barristers who still do not pay taxes and continue to practise as barristers. There are currently 25 bankrupt barristers still practising, and another 10 are on the brink of bankruptcy. The *Sydney Morning Herald* singled out four bankrupt barristers for particular attention. Reference was made to Stephen Archer, who has been bankrupt twice and has unpaid taxes of \$3.1 million. He has been convicted of 20 offences of not filing tax returns. In 1997 he was declared bankrupt for a second time, wiping out a new tax debt to the Australian Taxation Office of \$640,000. He claimed in his statement of affairs that his only asset was \$120. He lives in a house at Paddington owned by his wife. The report referred also to Robert Cameron, who has been bankrupt twice and has unpaid taxes of \$480,000. He is a bankruptcy specialist. He has paid virtually no income tax since 1984. He claimed in his latest statement of affairs to have no assets despite earning \$180,000 gross income. He lives in North Curl Curl in a house owned by his wife. He works from chambers in Phillip Street, which are owned by the Robert William Cameron Trust, to which he pays \$4,500 a month rent.

The article referred also to Bill Davison, who is a Senior Counsel earning more than \$600,000 a year. He was first bankrupted in 1992, owing \$591,000 to the Australian Taxation Office. He paid off some of his debt by 1995 but then went bankrupt again in 1999, cancelling out a new tax debt of \$1.5 million. He paid no tax for four years despite huge earnings. He claims he has no assets but lives the high life. Again, his wife owns their family home. They have two Mercedes cars, which are leased by a family company. In 1988 he spent \$50,000 on a trip to Aspen, and \$65,000 on American Express in the three months before going bankrupt. He spent \$133,000 from a personal bank account last year but is still in arrears to his creditors. Another barrister that rated a mention was Robert Somosi, who has been bankrupt twice and has unpaid taxes of \$835,000. The Australian Tax Commissioner, Michael Carmody, said in October last year, and reported in the *Sydney Morning Herald*:

It is difficult to escape the conclusion that some of these people use insolvency to avoid their tax obligations to the Australian community. Some become bankrupt for a second or third time, owing hundreds of thousands of dollars in tax on each occasion.

Apparently, nearly one-quarter of the State's barristers—about 500—owe taxes totalling \$50 million. New South Wales barristers are the worst tax delinquents in Australia. However, until now, bankruptcy has been no bar to practising as a barrister, and that is why the bill seeks to address that anomaly. The crux of the bill is set out in new section 38FB, which specifies that a legal practitioner who has committed an act of bankruptcy or has been found guilty of an indictable offence or of a tax offence, must show cause in writing why he or she should continue to hold a practising certificate. New section 38FC specifies that the Bar Council, for a barrister, and the Law Society, for a solicitor, must refuse to issue, or can cancel or suspend, a practising certificate if the legal practitioner has committed an act of bankruptcy, or been found guilty of a tax offence or an indictable offence if the legal practitioner cannot demonstrate that he or she is still a fit and proper person to practise. The Greens commend the bill to the House.

**The Hon. RICHARD JONES** [6.15 p.m.]: I support the legislation.

**The Hon. JANELLE SAFFIN** [6.15 p.m.]: This bill rightly introduces disclosure provisions for acts of bankruptcy and findings of guilt for indictable offences and tax offences—a matter I shall refer to later. However, I draw the attention of honourable members to some other measures that have been included in the bill that will enhance the accountability of the profession. In particular, the measures strengthen the powers of the independent Legal Services Commissioner and the composition of the Administrative Decisions Tribunal when it deals with disciplinary matters. The solicitors' rules and the barristers' rules are made by the Law Society Council and Bar Council respectively. The rules set out the manner in which practitioners should behave and the standards to which they should adhere. The bill gives the Legal Services Commissioner and the Legal Profession Advisory Council new powers to oversee rule-making by the Law Society Council and the Bar Council. The councils will be obliged to give the Legal Services Commissioner and the council 28 days notice of the making of a rule, unless it is compellingly urgent, so that they have an opportunity to make representations concerning the rule.

The commissioner can also ask the council to review any rule and, at the conclusion of the review, report to the Attorney General. The Attorney General will then have the power to declare a rule to be inoperative if it is not in the public interest. External scrutiny of the rule-making processes of professional bodies is an important element in promoting transparency. The independent Legal Services Commissioner will also have the power to monitor generally the exercise of regulatory functions by the Bar Council and the Law Society Council, other than the imposition of conditions on practising certificates. The commissioner will be empowered to report to Parliament on the exercise of his new functions. The amendments also introduce a new power for regulations to be made to declare any breach of the Act or the Regulations to be professional misconduct. This new power can be used to target specific shortcomings within the profession, and will enhance the powers of the commissioner and the councils to act against miscreant practitioners for specific breaches.

The bill also amends the Administrative Decisions Tribunal Act 1997 to confer on the president of the Administrative Decisions Tribunal a new discretion to vary the composition of panels that deal with legal profession disciplinary matters. The president will now be able to select a panel of between two and four members from a pool of judges, legal practitioners and lay members provided that any panel must have at least one lay member, and a panel of four members must have at least two lay members. That change will enable a judge to preside over serious disciplinary matters, instead of a practising lawyer, and further enhance the representation of legal people on the tribunal. That will enhance public confidence in the objectivity of the disciplinary system.

I now turn to the provisions of the bill regarding disclosure for acts of bankruptcy and findings of guilt for indictable offences and tax offences. The bill contains stringent measures in that regard, and it is about time. It will make the regime for disclosure of acts of bankruptcy and findings of guilt for indictable offences and tax



offences by legal practitioners the toughest in Australia. In the Legislative Assembly the Opposition referred to representations that had been made to it by the Law Society and sought the views of the Government as to a number of amendments proposed by the society. Some people, at least some members of the legal profession, might consider the measures unduly rigorous, whilst others know that it is required to maintain the integrity of the profession.

The provisions of the bill must be considered in the context of the disgraceful conduct of barristers in relation to their tax affairs. That is why the Attorney General in the Legislative Assembly indicated that the Government would decline to support most of the amendments proposed by the Opposition. No doubt there are many people in the community who lodge tax returns late, or who overlook the declaration of income because their financial affairs are disorganised or because they are simply too busy. That may apply, especially to self-employed people such as barristers, indeed even some members of Parliament. However, the conduct of the barristers, as reported by the press, could not be characterised as being in that category. It amounted to a flagrant systematic and long-standing disregard of their legal obligations to pay tax.

Moreover, these do not appear to have been barristers who were struggling. These barristers reportedly lived in salubrious waterfront houses, employed domestic staff, took overseas holidays, and generally enjoyed a lifestyle that is foreign to most taxpayers. I do not begrudge any of that to them, but I do whilst they are not paying their tax. When the taxation office looked like catching up with them, they reportedly transferred their assets to spouses and former spouses, and eventually manipulated the bankruptcy laws to stop the taxation office from recovering its debts. They achieved this by becoming bankrupt in circumstances where their only creditor was the taxation office.

There can be no doubt that such conduct is a sham and deserves the moral condemnation of the whole community. This is not the sort of conduct that is acceptable to the community. Legal practitioners, of all people, should be cognisant of their legal obligations, and their obligation to society, to meet their taxation commitments. The Government is confident that the measures in the bill will ensure that barristers and solicitors take their obligations seriously in future. The Government believes—and, as a former practitioner, so do I—that the changes to the system for disciplining of practitioners, rule-making, the composition of the tribunal, and the disclosure provisions will enhance public confidence in the integrity of the system of the regulation of the legal profession. I support the bill.

**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) [6.20 p.m.], in reply: 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.**

### **In Committee**

**Clauses 1 to 5 agreed to.**

### **Schedule 1**

**The Hon. JOHN RYAN** [6.22 p.m.]: I move the Opposition amendment as circulated:

Page 7, schedule 1 [6], proposed section 38FC (2), line 24. Omit "7 days". Insert instead "14 days".

As I indicated in my contribution to debate on the second reading, the Opposition has asked the Government to give consideration to accepting this amendment. I understand the Government has done so and that it is likely to agree to the amendment.

**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) [6.23 p.m.]: The provision requires the council to give notice to legal practitioners within seven days of the council's becoming aware that the practitioner has committed an act of bankruptcy or been found guilty of an indictable offence or a tax offence. This provision applies in cases where the practitioner has neglected to comply with his or her duty of notifying the council of the act or finding under proposed section 38FB. The amendment would extend the period within which the council must act to 14 days. The Government does not oppose the amendment.

**The Hon. IAN COHEN** [6.23 p.m.]: Here we are dealing with a group of people who have a high degree of skill in the law. They are very well aware of the activities in which they have been involved. The Greens do not support the extension of the period to 14 days.

**Amendment agreed to.**

**Schedule as amended agreed to.**

**Schedule 2 agreed to.**

**Title agreed to.**

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

## **BETTING TAX BILL**

### **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) [6.28 p.m.]: I move:

That this bill be now read a second time.

In November 1998, the Independent Pricing and Regulatory Tribunal published a report on its inquiry into gaming in New South Wales. The report stated that gaming revenue collection should be undertaken by the lowest cost provider of an effective, high-quality service, and that it was desirable for this revenue collection function to be separated from gaming policy and regulation. The Government subsequently decided to transfer responsibility for collection of gaming, racing and Keno taxes and duties to the Office of State Revenue. Collection of Keno revenue was transferred in July 2000, and collection of racing revenue was transferred in January 2001. Collection of gaming revenue will be transferred within the next few months.

The changes implemented by the Betting Tax Bill will enable the Office of State Revenue to more effectively administer betting taxes, and will assist in integrating the relevant functions into the existing legislative framework for administration of State taxes. All other non-revenue legislation for the administration of wagering and racing remains under the administration of the Minister for Gaming and Racing. The proposed new Act consolidates the betting tax provisions currently contained in three different Acts and Regulations. The proposed Act is merely a modern rewrite of the legislation, with the only substantive change being the adoption of the provisions of the Taxation Administration Act. The bill will impose betting tax on bookmakers and totalisator licensees at the same rates as currently apply. The bill contains provisions requiring the lodgement of returns and payment of betting tax. These will apply to return periods and due dates that are essentially the same as current practice, but are less prescriptive as to the required forms.

Provisions requiring the keeping of records in relation to betting activities are also less prescriptive, but will still be sufficient to ensure the accuracy of tax assessed. Consistent with other State taxing Acts, the bill imposes or confers all functions and powers relating to the administration of the tax on the Chief Commissioner of State Revenue, with authority to delegate to appropriate officers. The new Act is to be read together with the Taxation Administration Act 1996, which contains provisions for the imposition of interest and penalties, collection of tax, record keeping, investigations, objections and reviews and offences.

Adoption of the Taxation Administration Act effects the following changes: interest will be applied to late payments of betting tax, calculated daily at a rate tied to a market rate, as opposed to the current flat 10 per cent penalty; the timing and method of payment of betting tax and lodgement of returns is less prescriptive and more flexible; and betting taxpayers will have formal avenues for review of assessments. The bill also makes consequential amendments to three other Acts. Provisions in the Bookmakers (Taxation) Act dealing with the registration of bookmakers, the establishment and functions of the Bookmakers Revision Committee, and certain powers of inspection are transferred to the Racing Administration Act 1998, which already deals with other functions relating to bookmakers. These provisions remain within the administration of the Department of Gaming and Racing.

The Bookmaker Revision Committee is comprised of representatives of racing associations and bookmakers, and is chaired by a representative of the Department of Gaming and Racing. The committee acts as

a forum for major stakeholders in the industry and reviews the taxpayer record of bookmakers. The amendments, therefore, add the Chief Commissioner of State Revenue as a member of the committee. The Taxation Administration Act 1996 is amended to include the Betting Tax Act as a taxation law. The secrecy provisions are also amended to authorise the provision of information acquired under a taxation law to the Director-General of the Department of Gaming and Racing and to the Bookmakers Revision Committee.

Part 6 of the Totalizator Act 1997 deals with betting tax, and most of the provisions are repealed as a result of their transfer to the new Act. However, provisions relating to the conduct of totalisators remain, including section 69, which relates to the amount of commission that may be deducted, and section 71, which relates to investments pooled from interstate totalisators. The secrecy provisions of the Totalizator Act are amended to authorise the provision of information acquired under the Act to the Chief Commissioner of State Revenue when such information is relevant to the administration of the new Betting Tax Act. The Racing Taxation (Betting Tax) Act 1952, the Bookmakers (Taxation) Act 1971 and the Bookmakers (Taxation) Regulation 1996 are repealed. For the assistance of honourable members I seek leave to incorporate in *Hansard* a summary of the bill. I commend the bill to the House.

**Leave granted.**

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**Betting Tax Bill 2001**  
**Summary of the Bill**

**Part 1 Preliminary**

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 July 2001.

Clause 3 defines certain terms used in the proposed Act.

Clause 4 provides that notes included in the proposed Act do not form part of the Act.

Clause 5 provides that the proposed Act is to be read with the *Taxation Administration Act 1996*, which makes provision for the administration and enforcement of taxation laws.

**Part 2 Imposition of tax**

Clauses 6 & 7 impose a tax on bets made by backers with bookmakers on any event or contingency of or relating to a horse race or to greyhound racing or to a sports betting event. Clauses 8, 9 & 10 impose a tax on net earnings from approved betting activities conducted by totalisator licensees, or commissions taken on totalisator betting, and on amounts rounded down in calculating dividends.

**Part 3 Rebates of tax**

Clause 11 provides for a rebate of tax for bets back, being amounts "laid off" with another bookmaker or with TAB Ltd.

Clause 12 provides for a rebate of tax to racing clubs when turnover of a race meeting is less than an amount determined under the clause.

**Part 4 Returns**

Clause 13 requires a bookmaker to prepare returns specifying all bets made with the bookmaker in the preceding week.

Clauses 14, 15 & 16 require a racing club to prepare returns detailing all bookmakers who carried on business in respect of race meetings, at betting auditoriums and on sports betting events.

**Part 5 Miscellaneous**

Clause 17 requires a bookmaker to keep records of bets made with the bookmaker and bets back made by the bookmaker.

Clause 18 provides for a proportion of tax paid in respect of a totalisator on sports betting events to be paid to the Sport and Recreation Fund established under the *Public Lotteries Act 1996*.

Clause 19 provides for offences under the proposed Act.

Clause 20 empowers the Governor to make regulations.

Clause 21 provides for a review of the proposed Act.

Clause 22 is a formal provision giving effect to the amendments to the *Racing Administration Act 1998*, the *Taxation Administration Act 1996*, and the *Totalizator Act 1997*, as set out in Schedules 1, 2 & 3.

Clause 23 repeals the *Bookmakers (Taxation) Act 1971*, the *Bookmakers (Taxation) Regulation 1996* and the *Racing Taxation (Betting Tax) Act 1952*.

Clause 24 gives effect to the savings and transitional provisions in Schedule 4.

**Schedule 1 Amendment of Racing Administration Act 1998**

Schedule 1 inserts in the *Racing Administration Act 1998* provisions relating to the registration of bookmakers and the Bookmakers Revision Committee that were formerly in the *Bookmakers (Taxation) Act 1971*. In addition, the Chief Commissioner of State Revenue is included as a member of the Bookmakers Revision Committee.

**Schedule 2 Amendment of Taxation Administration Act 1996**

Schedule 2[1] applies the provisions of the *Taxation Administration Act 1996*, which makes provision for the administration and enforcement of taxation laws, to the new Act.

Schedule 2[2] provides for the disclosure of information under the Act to the Director-General of the Department of Gaming and Racing.

Schedule 2[3] provides that in any action for the recovery of any tax payable under the proposed Act, a defendant cannot plead, and the court cannot take judicial notice of, any law relating to gaming in answer to or avoidance of the claim in the action.

**Schedule 3 Amendment of Totalizator Act 1997**

Schedule 3 [1], [4], [8], [9] and [10] omit provisions that are transferred to the proposed Act.  
Schedule 3 [2], [3] and [5] make consequential amendments.

Schedule 3 [6], [7], [11] and [12] omit provisions that are dealt with in the *Taxation Administration Act 1996*, which will apply to the provisions transferred to the proposed Act.

Schedule 3[13] provides for the disclosure of information under the Act to the Chief Commissioner of State Revenue.

**Schedule 4 Savings and transitional provisions**

Schedule 4 makes savings and transitional provisions consequent on the enactment of the proposed Act.

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**The Hon. IAN COHEN** [6.33 p.m.]: On behalf of the Greens I support the Betting Tax Bill, which consolidates betting tax legislation into one Act and applies the Taxation Administration Act. The Independent Pricing and Regulatory Tribunal conducted a review of gaming in New South Wales and recommended that it was desirable to separate revenue collection functions from the regulation of gaming and racing. That was accepted by the Government, which handed over its revenue collection functions to the Office of State Revenue. This process was completed in January this year. The bill establishes the separation of functions and will enable the Office of State Revenue to more efficiently and effectively undertake its revenue collection functions in the area of gaming and racing. I commend the bill to the House.

**The Hon. RICHARD JONES** [6.34 p.m.]: I support the Betting Tax Bill. I believe that we should increase taxes on betting.

*[The President left the chair at 6.35 p.m. The House resumed at 8.00 p.m.]*

**The Hon. GREG PEARCE** [8.00 p.m.]: The Coalition will not oppose the Betting Tax Bill. There are, however, some issues I wish to raise regarding the Coalition's concern that some betting taxes are not, at the very least, being reduced. The significant impact of those taxes greatly affects the New South Wales bookmaking industry, and this impact has flow-on effects to the public interest in racing in New South Wales. The fundamental problem arises from the fact that bookmakers in this State claim that they cannot compete with the TAB and with bookmakers from other States. The whole industry of bookmaking appears to be dying out. This leads to a dramatic change in culture at the track because of the gradual decline of bookmakers who are moving interstate or leaving the industry altogether. That is a sad reflection on government policy and a sad direction for the New South Wales racing industry to take.

Bookmaking has a long tradition and history in New South Wales. In fact, the presence of bookmakers is one of the reasons people spend a day at the race track. People enjoy the bustle and the noise and the colour that the bookmakers' boards and the different characters provide; they enjoy having a punt with the bookmakers. However, the New South Wales bookmakers are dying out with the exponential rise of computerisation and off-course betting. As long as those betting taxes are not reduced the inevitable result must be a slow and sad decline for the whole industry of bookmaking in our State. The object of the bill is to consolidate New South Wales legislation relating to betting tax. The new Act will impose a betting tax on bookmakers in relation to racing and sports betting events. It will also impose a betting tax on totalisator licensees in relation to commissions taken on, and net earnings from, totalisator betting and approved betting activities on certain racing and sports betting events.

The new Act will also make provision for the lodgment of returns and the keeping of records in relation to betting activities. The provisions of the Taxation Administration Act 1996, which makes provision for the administration and enforcement of taxation laws, will be applied to the new Act. These administrative changes are reasonable and will not be opposed by the Opposition, but we do believe that there should be a significant reduction, if not the total abolition, of the turnover tax on bookmakers in this State. Indeed, a reduction in this particular tax was a part of the Opposition's policy platform in the lead-up to the last election and it was a significant point of difference between the way the Opposition and the Government proposed to deal with the racing industry. But the election was fought two years ago and bookmakers remain disappointed that no action has been taken in this area.

The role of the Department of Gaming and Racing is changing significantly, and this legislation reflects that change. The department's functions are continually being wound down or farmed out, and the reasons we have been given are as diverse as the introduction of central monitoring systems or because of the decisions of the High Court. The legislation continues that process. It hands over responsibility for the collection of the tax

from the Department of Gaming and Racing to Treasury. We have seen examples of this sort of legislation on a number of occasions previously. This is combined with the massive staffing cuts that have occurred within the department. As the *Sydney Morning Herald* stated on 6 June in its article entitled "The great racing gamble backfires: complaints up as staff cut":

The Department of Gaming and Racing has been gutted in a series of staff cuts that is crippling its ability to police the State's liquor and gaming laws.

It went on to argue that it obtained internal departmental documents. The article stated:

... bit cuts mean it will not be able to maintain "critical activities", including investigating fraud and mismanagement, aiding police investigations and even implementing initiatives in the Responsible Gaming Bill.

The possible results from this are obvious and very disturbing and it is yet another example of this Government's arrogance and abrogation of responsibility. The racing industry is one worthy of support from all members of this House. It should be applauded for the contribution it makes to industry and employment with more than 50,000 people working in it in this State. But it should not be applauded for its contribution to a skyrocketing gambling problem in our society. And let us face it, the Government's approach is completely drive by its addiction to gambling revenues.

Concerns are rightly being raised about the problems arising from the explosion in gambling in this State. We should be worried about those problems and by the number of problem gamblers and their impacts. I venture, though, that most citizens of New South Wales would be happy to support racing as a dignified and legitimate sport, a form of entertainment and an industry that makes a positive contribution to the economy. Of course, there have been some instances of corruption and improper practices, but we are all working to prevent these. However, as this Government's only concern is the flow of revenue, it does nothing to support the positive contribution of the industry to tourism, entertainment and the economy. This Government rarely considers the social ill effects of gambling on our society. The editorial in the *Daily Telegraph* on 9 February discussed the appalling impact of poker machines. The article entitled "Carr Pokies policy has a social cost" stated:

Premier Bob Carr, instead of attempting to tinker at the edges on the control of poker machines, needs to completely revise his thinking. His amendments to the Licensing Act, proposals and freezes on the number of poker machines have amounted to nothing.

The Government does not treat the massive social dislocation caused by gambling with the importance it deserves. That is clearly also the case with the way the Government has treated the entire racing industry in New South Wales. Comparisons of the industry in New South Wales to the industry in Victoria are not complimentary for New South Wales. We are getting left well behind. In fact, our industry is slowly but surely being strangled to death. Racing New South Wales says that in 1994, Victorian racing funding overtook New South Wales funding for the first time ever and that despite the privatisation of New South Wales TAB in 1998, last financial year, Victorian racing received \$50 million more from TABCORP than New South Wales Racing received from TAB Limited. It is no surprise, therefore, that owners and trainers are leaving New South Wales en masse to take up far more competitive opportunities in Victoria.

When owners leave, so too do strappers, trainers and others associated with the industry. As I said earlier, bookmakers too are leaving in droves. The inevitable result of this is that there are fewer starters in the race meets around the State, the prize pools start to decrease and some race tracks, particularly in smaller country towns, will be forced to close down. The racing industry will shortly be in desperate times indeed. It is against this backdrop that the Betting Tax Bill is being debated. The racing industry in this State has recently gone through an extraordinarily turbulent time in which numerous changes have been made and programs introduced. The privatisation of the TAB has occurred. The temporary casino, sports betting and Sky Channel have all been introduced. Charges have been made to both Harness Racing New South Wales and the Greyhound Racing Authority. It has been argued that all of these changes have had a detrimental impact on the ever-dwindling number of bookmakers.

The racing industry is under unprecedented pressure. Its pillars of support are gradually being pulled away, but it would be a significant fillip for bookmakers in particular and the racing industry in general if the turnover tax were to be lowered or abolished—something the Opposition will gladly commit to if the Government does not have the resolve. The Carr Government's legacy to this State will be the legacy of social and economic decline as a result of Carr and the Treasurer's addiction to gambling revenues. At least this bill takes the collection of revenues away from the Minister for Gaming and Racing and places it in a revenue authority. We therefore support the bill.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.09 p.m.], in reply: I thank all honourable members for their contributions and commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

**LOCAL GOVERNMENT AMENDMENT (ENFORCEMENT OF PARKING AND RELATED OFFENCES) BILL**

**Second Reading**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.10 p.m.]: I move:

That this bill be now read a second time.

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

**Leave granted.**

I am pleased to introduce the Local Government Amendment (Enforcement of Parking and Related Offences) Bill 2001. This bill contains several amendments to the Local Government Act 1993. The amendments are designed to facilitate the Government's decision to transfer the responsibility for enforcement of on-street parking regulations from the New South Wales Police Service to local councils.

The Government's decision to transfer this function follows a 1999 report by the Auditor-General into on-street parking in New South Wales. The report found that the efficiency and effectiveness of parking enforcement in New South Wales was poor in comparison with other States, where the function is undertaken by local councils. The Auditor-General's report recommended that the arrangements for enforcement be reviewed, including the involvement of councils.

Subsequent reviews by inter-departmental committees have established that transfer of the function to local government is the option most likely to ensure parking enforcement achieves its objectives of enhanced road safety and traffic flow and equitable access to parking space for motorists.

The inter-departmental committees worked in consultation with the Local Government and Shires Association and the Public Service Association.

The Local Government and Shires Associations have represented all councils except the council of the city of Sydney in negotiating arrangements for the transfer. The associations are supportive of the initiative, as is the council of the city of Sydney.

One of the main considerations in making arrangements for the transfer of this function to councils has been protecting the employment and entitlements of those who are currently employed by the Police Service as parking patrol officers.

The function will only be transferred to councils that agree to offer employment to parking patrol officers currently employed in their areas. Salary rates will be at least equal to the officer's current salary rate. All leave entitlements will be paid out by the Police Service.

Superannuation entitlements as at the date of transfer will be funded by the appropriate superannuation fund and superannuation coverage will continue through local government superannuation schemes.

Parking patrol officers currently employed by the Police Service who accept offers of employment from councils will be paid up to 20 weeks salary as a termination payment under the terms of the Employment Protection Regulation 1995.

Also, in cases where parking patrol officers cannot be offered employment by councils for medical reasons they will be paid up to 52 weeks salary on termination of their employment with the Police Service in accordance with the managing displaced employees policy.

In order to facilitate the employment of parking patrol officers by councils, the Local Government Act must be amended.

The Local Government Act requires vacant staff positions to be advertised and appointments to those positions to be made on merit from those persons who have applied for appointment. An amendment proposed in the bill will permit councils to appoint parking patrol officers currently employed by the Police Service without complying with these requirements.

The Government's decision to transfer the responsibility for enforcement of on-street parking regulations to local councils is subject to the Crown retaining a share of the moneys received from penalties and fines for parking offences. It is proposed that revenue sharing arrangements will be entered into with a number of councils expected to benefit most from the transfer. Other councils will retain all revenues from enforcing on-street parking offences.

Section 694 of the Local Government Act requires penalties and fines recovered in proceedings instituted by councils to be paid to the relevant council and allocated to its Consolidated Fund. An amendment proposed in the bill will enable the making of arrangements for the allocation, between a council and the Crown, of parking penalties and fines recovered in such proceedings.

Any penalty or fine to which such an arrangement relates will then be able to be apportioned between the council and the Crown in accordance with the particular arrangement.

In conclusion, the proposed amendments are essential for the effective implementation of the Government's decision to transfer the parking enforcement function to local councils. I commend the bill to the House.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [8.12 p.m.]: This bill is another attempt by the Carr Government to sneak one past Parliament and local government. On the one hand, the Opposition acknowledges the need to support the bill as it proposes the legislation necessary to protect parking police officers affected by the transfer of responsibility from State to local government. However, unmistakably within the same amendment subsections (3) and (4) of new section 694 would undermine the ability of local government to retain all revenue necessary to cover the costs incurred by the additional responsibilities imposed by the State Government, once again indicating how mean and tricky the Government is. Therefore, for the sake of protecting both local government and parking patrol officers, the Opposition will not oppose this bill. However, due to a blatant attempt by the Carr Government's robber baron, the Treasurer, to rob councils of the right to retain all revenue collected from the enforcement of parking and related offences, the Opposition has no choice but to move amendments in Committee.

**The Hon. John Johnson:** While he is away you are having a shot at him.

**The Hon. DUNCAN GAY:** The Hon. John Johnson knows that if he were here I would say the same thing. The Opposition supports the transfer of the responsibility for parking patrol officers from the State Government to local government. That support stems from the inability, which was highlighted in the Auditor-General's report, of the New South Wales Police Service to provide the necessary level of service with respect to enforcement in our communities. The State Government has admitted defeat on that issue and has decided to pass the job to local government. I have faith in local government being capable of doing the job. Proper policing of parking zones is an issue which affects the commercial viability for many local businesses as it gives them greater access to potential customers. The transfer of parking enforcement from State to local government will no doubt raise the level of service to local areas and provide a higher level of policing. That, in turn, will improve the current parking problems around schools, hospitals and in disabled parking areas.

Parking patrol officers have expressed quite proper concerns about the security of employment within local government. The bill inserts a new part entitled "Provisions in connection with the enactment of Local Government Amendment (Enforcement of Parking and Related Offences) Act 2001." The new part has the subheading "Employment of former parking patrol officers". The Opposition contends that the new part makes adequate provision for those affected by the transfer. My colleague in the Legislative Assembly, Mr Andrew Tink, the shadow Minister for Police, has spoken with a representative of the Public Service Association, who informed him that affected members will become members of the Municipal Employees Union [MEU] as a part of this package and, therefore, from an industrial perspective they will be protected. In my dealings with the MEU I have found that it is an entirely honourable union. Its representatives say nice things to me privately but not publicly. However, I will work on that.

**The Hon. John Johnson:** You respect each other but it would not vote for you.

**The Hon. DUNCAN GAY:** That is true. They may vote for me privately; I would not know that. The Opposition is, therefore, satisfied with the provisions outlined in the bill for parking patrol officers affected by the transfer. The problem with this bill lies in subsections (3) and (4) of new section 694, which seek to grant the Treasurer permission to enter into arrangements with a council on an individual basis with respect to the allocation of any money paid or payable to the council from penalties and fines for parking and related offences recovered proceedings instituted by the council. Because local government is doing all the work the Opposition asks the Treasurer why there is a need to take any revenue at all. Honourable members could well imagine the temptation of the Treasurer to negotiate individually with councils, and that gives him an unfair advantage.

What is the State Government contributing to this deal, except giving back to local government a responsibility that the Government could not fulfil? The answer is nothing. All the Government is doing is successfully passing another responsibility onto local government, only this time it has the nerve to legislate an arrangement to retrieve a portion of this money. Frankly, that is extraordinary. There is always a catch with the Carr Government. Every bill passed through Parliament that aims to increase local government responsibilities comes with the other side of the sword, which, for the Carr Government is not enough funding, no commitment to funding or, in this case, revenue sharing. Councils are left with little or no funds and face additional costs and responsibilities. Local government is crying out for more revenue. What can it do? The Government gives local government an opportunity to retain more revenue, on the proviso that when it suits the Government it reserves the right to arrange with councils to take back a portion of that money.

Where does the Government draw the line? How much will ever be enough? In return, councils may seek to compensate for that loss of revenue by placing more restrictions on parking in their local areas. That will ultimately hurt local government because any rise in parking restrictions that could be argued to be unnecessary will result in the public mistrusting their councils. The issuing of infringement notices will always be contentious. It may suit the needs of one group or one person, while at the same time it hurting the pocket of another. Local government is being pushed by the State Government to accept extra responsibility. The Opposition accepts that if parking is policed properly there will be a net gain for the community and for businesses that can provide parking for many customers, but the situation could easily be reversed. Local government, with scarce revenue, could regard this as a potential milch cow and overpolice parking restrictions in an attempt to raise money.

**The Hon. Ian Cohen:** Like the State Government did with radar traps.

**The Hon. DUNCAN GAY:** Yes, with radar traps at the bottoms of hills where the cruise control overruns. Rather than having marked cars on the roads acting as a deterrent, police hide in places to trap motorists purely to raise revenue. The opportunity is available for local councils but it may be too much for some of them. Most councils will be all right but there is the potential for problems because of the pressures imposed on them by the State Government. The Opposition supports the transfer of the responsibility for parking enforcement from the State Government to local government. However, the Opposition highlights the fact that this is another example of the Carr Government passing on State responsibilities to local government. It will be additional revenue for local government, but at what cost? That will be best measured against the recommendations of the Auditor-General's report. Because those recommendations result from State Government's failure to properly manage parking enforcement, they therefore provide an outline of the tall order that local government will have to fill.

I have already said that I have faith in local government. However, to carry out its newly allocated tasks local government will need an enormous input of money and resources. The task will include a public education campaign, maintenance of new property technology and performance reviews of parking patrol officers, to name a few. The Opposition is concerned that the long-term cost to local government may be greater than the return, particularly if amendments are not made to restrict the Treasurer from dipping his hand into the coffer. In conclusion, the bill seeks to provide the necessary protection for those responsible for the enforcement of parking, namely, local government and parking patrol officers.

In the same breath, the bill also seeks to protect the Carr Government's bank balance by enabling the Treasurer to enter into arrangements with councils to retain a portion of the revenue collected. The Opposition acknowledges the need for the protection of parking patrol officers and local government in this transfer. However, it does not acknowledge the need for the Treasurer to pilfer the revenue of councils, especially when the Carr Government offers nothing in return, except more responsibility without responsible funding. Therefore, the Opposition will not oppose the bill. However, it will move amendments in Committee.

**The Hon. IAN COHEN** [8.22 p.m.]: I listened with interest to the Deputy Leader of the Opposition. The Greens support the bill provided that the Opposition amendments are incorporated. I had hoped that the Opposition would take a firmer position. Indeed, I thought the Deputy Leader of the Opposition would be guarding the gate to stop the charging bull, but he was more like a matador, who, at the last moment, stepped out of the way with a flourish and let the bull go through. The Greens are interested in supporting the Opposition's amendments and had hoped that the Opposition would oppose the bill if the amendments were not accepted. If the amendments are not incorporated we have serious reservations with the bill because local government has expressed concern about it.

The bill implements the recommendations of the Auditor-General's report entitled "Enforcement of Street Parking". The Auditor-General recommended that the employment of parking officers be transferred from the Police Department to local government. That is a non-controversial aspect of the bill. I have received assurances from the relevant union, the Public Service Association, that the employment conditions and entitlements of these officers will not be adversely affected by the bill. I accept those assurances. However, the Greens have serious concerns about the revenue implications of the bill. The bill is cunning; it is not the simple bill it appears to be. The bill has a major omission: without the Opposition amendments, local councils are left in a potentially dangerous financial position. They will be handed all the responsibility without any guarantee of a fair allocation of the revenue.

Nothing in the bill ensures that local councils will be provided with a fair share of parking revenue. The Government claims the omission is a minor detail that will be addressed in arrangements to be made later



between councils and the Treasurer. I suggest that those arrangements could involve an unfair negotiating environment, given the track record of the Treasurer and the imposition on local councils, which had little power in relation to this matter. I have received information from a number of sources, one of which is Robyn Read, General Manager of Byron Shire Council, who said:

Byron Shire Council currently has an agreement to conduct on-street parking. All revenue raised (when and if collected) is returned to Council (minus the SEIN's processing fee of approx \$18).

The compliance section have commented on the Bill as follows:

As is the requirement under section 694 of the Act, penalties and fines that are recovered in proceedings instituted by a council are currently paid to the council's consolidated fund. If section 694 is amended this may enable the Treasurer to enter into arrangements with a local council for the allocation, between the council and the State, of parking penalties and fines recovered in such proceedings.

Does this effectively mean that the State can "charge Council" for the work that Council does? Does it give the State that opportunity? If the amendment is approved, "The penalty or fine to which such an arrangement relates will then be apportioned between the council and the State in accordance with the arrangement". (That maybe a percentage; it maybe nothing—it's not defined.)

Will Councils be collecting revenue for the State, in effect?

There are currently two Crown parking officers in this region, and at the present time we are not aware of Council receiving any requests for transfer of any Crown parking officers.

[The Government needs to] clarify whether the powers that police have in regard to parking infringement in the case, for example, of parking across a driveway. Will the policing powers transfer to local council officers such that the police will no longer attend? Some of these callouts are at night and weekends when council staff are often not working.

Byron Shire Council has expressed those concerns. It is necessary for the bill to contain a clear provision which details those arrangements. The Lord Mayor of Sydney claims that North Sydney Council, South Sydney City Council and the Local Government and Shires Associations are greedy. He accuses them of supporting an opportunistic amendment. The Greens do not agree with the Lord Mayor.

**The Hon. Duncan Gay:** That's because Frank has done his own deal.

**The Hon. IAN COHEN:** The Deputy Leader of the Opposition says that Frank has done his own deal. Certainly, there are different circumstances for different councils, and it appears to be overly onerous to tag North Sydney and South Sydney local government areas with a formula similar to that of the city of Sydney. To the contrary, by seeking to shift responsibility for parking enforcement while retaining half the revenue, it is the State Government that is being greedy. This bill is simply the latest example of the alarming trend to shift responsibility from State government to local government without sufficient provision for local government to finance the necessary administrative arrangements. That needs to be noted.

Small country councils have experienced severe hardship as a result of onerous tasks imposed upon them by State Government legislation that has provided little financial base to carry out those duties. For example, changes in enforcement of pollution and noise legislation have placed additional statutory responsibilities on local government without sufficient funds being made available from the State. The incorporation of the Opposition's amendments will not result in an unfair reduction in State revenue. Any impact on State revenue will be minimal and the additional revenue for local councils will enable them to provide better facilities to avoid parking problems in the local area.

The bill does not deal with some important issues raised by the Auditor-General. He identified other shortcomings in the law that are not addressed in the bill. Those shortcomings include the need to articulate more clearly the objectives to be achieved from the legislation and the relative priorities, such as how the legislation assists traffic flow, provides safety for drivers and pedestrians, and provides for the sharing of limited car parking spaces. They are important matters. Hopefully, I will receive a positive response to requests I have made on behalf of Byron Shire Council for a traffic management study. That study will provide a scientific and well-assessed basis for dealing with the traffic problems in that tourist area. These are problems that the local council has to confront regularly at times of peak tourist flows. It is an onerous task. I hope that the Government, through the Minister for Transport in this case, recognises the opportunity to provide for local councils in order to get those studies under way.

The Auditor-General also pointed out that parking on the footpath is not an offence in New South Wales. Why has not the Government taken this opportunity to create comprehensive parking legislation? The

answer is that the bean counters in Treasury are only interested in the dollars and show no interest in issues that are of real importance to the community. Parking is an important urban design issue. Vehicle congestion is affecting the quality of life of people in many communities. The availability of parking is a key influence in people's choice of transport mode. If there is nowhere to park, or if parking is strictly limited, people will be more likely to choose to travel by public transport, walk or ride a bike.

The beneficial effect of limited parking was shown during the Olympic Games. People knew there was no parking available at Olympic Park, and as a result rail transport became the most attractive and convenient transport option. This was the most important and long-lasting achievement of the Games. The success of public transport was due to it being able to compete with private vehicles in terms of convenience. If parking is provided in new developments, there needs to be compensation for improved public transport. This was recognised last year with changes to the parking levy which were supported by the Greens. We hope the Government will take up the Auditor-General's suggestion and recognise the need for more comprehensive legislation in relation to parking. This bill is not just about dollars and efficiency. It is also about local democracy, livable communities and a fair deal for councils that are acting responsibly in representing the interests of their communities. I hope the Government will consider the Opposition amendments, which the Greens are happy to support.

**The Hon. RICHARD JONES** [8.31 p.m.]: The legislation is extremely simple. Nothing in it compels council to take over responsibility for parking officers. The councils are not being obliged by this legislation to take parking officers under their own wing. It is up to councils throughout New South Wales to negotiate the terms of the takeover. It is up to North Sydney Council and South Sydney City Council to negotiate their own terms. Nothing in the bill says that they will get 50 per cent of gross or net revenue, so it is for the councils to negotiate the best possible deal that they can with the Treasurer. If they do not like the deal that is offered, they do not have to take over responsibility for parking officers.

**The Hon. Duncan Gay:** Yes they do.

**The Hon. RICHARD JONES:** They are not obliged to. The parking officers will stay with the Police Service until the negotiation of a deal that suits South Sydney City Council and North Sydney Council.

**The Hon. Duncan Gay:** That is not true.

**The Hon. RICHARD JONES:** It is true.

**The Hon. Duncan Gay:** It is just not true.

**The Hon. RICHARD JONES:** Demonstrate that it is not true. Nothing in the bill compels the council in that respect.

**The Hon. Duncan Gay:** They just will not have any parking patrols.

**The Hon. RICHARD JONES:** Of course they will have parking patrols. Who will lose out? It will be Treasury that will lose out. Nothing compels the councils. It is entirely up to South Sydney City Council to negotiate a deal. If the Opposition amendment is agreed to, there will not be a transfer of responsibility for these officers for five years, and at the end of that time the amendment speaks of 50 per cent of the revenue. What is not mentioned in the amendment is that it is 50 per cent of net revenue, not gross revenue, that is transferred. So the council would be worse off under this Opposition amendment.

**The Hon. Duncan Gay:** They are happy with it.

**The Hon. RICHARD JONES:** They will not be happy if they get 50 per cent of the gross. It is 50 per cent of the net revenue. The Opposition has made a big mistake in its amendment.

**The Hon. Duncan Gay:** They are happy with it.

**The Hon. RICHARD JONES:** In that case, they could not have read the figures. Certainly Frank Sartor is not happy with it. He is happy with the legislation as it is.

**The Hon. Duncan Gay:** He has done his own deal.

**The Hon. RICHARD JONES:** I have spoken with Clover Moore and I have read her letters on this issue, and I understand where she is coming from. But she must realise that South Sydney City Council can negotiate with the Treasurer, or with Treasury, and could end up with 70 per cent of the revenue.

**The Hon. Duncan Gay:** Come on!

**The Hon. RICHARD JONES:** They could do that.

**The Hon. Don Harwin:** The Greens, the Democrats and the two Independents absolutely support this amendment.

**The Hon. RICHARD JONES:** That may be so, but the councils do not have to take over responsibility for parking patrol officers. Nothing in the legislation obliges them to do that; it is all through negotiation.

**The Hon. Don Harwin:** That is not right.

**The Hon. RICHARD JONES:** It is right. Read the bill—it says "may" enter into an arrangement. There is no compulsion to enter into an arrangement. It is all through negotiation with Treasury. Of course Treasury would like all of the money if it could get hold of it, but it is not going to get it all. It is up to the North Sydney and South Sydney councils to negotiate a deal to get more. But, if the Opposition amendment is passed, they will get 50 per cent of gross revenue, not 50 per cent of net revenue. So they will lose. They will be much worse off if the Opposition amendment is successful.

**The Hon. DON HARWIN** [8.34 p.m.]: The origins of this bill lie in the Auditor-General's 1999 report on enforcement of parking fines. The stewardship by the Police Service of the enforcement of parking offences is very much at the heart of the bill. The report of the Auditor-General contained a number of disturbing findings. The report contained six major findings. First, it found that the Police Service had failed to set appropriate arrangements for accountability. For example, there were no success measurements for enforcement; and the role was performed in a perfunctory way, rather than being planned adequately. Further, surveys to determine the level of compliance with the law had not been undertaken by the Police Service; the Infringement Processing Bureau did not properly organise or assess information that was collected, so that management of the scheme could be effected; parking patrol officers were not subject to performance criteria; and supervision of parking patrol officers was regarded as inadequate.

The second major finding of the Auditor-General concerned the cost of parking enforcement. The Auditor-General noted that the Public Accounts Committee of this Parliament for the first time, in 1986, had commented adversely on the enforcement of parking arrangements. The Auditor-General noted in 1999 that, even though the issue had been raised 13 years earlier, there had been only minimal improvement. The third issue that the Auditor-General spoke about concerned human resources management. The Auditor-General saw significant room for improvement in performance in that area. Fourthly, the Auditor-General commented on technology, noting that the Police Service simply had not kept up with technology improvements in this area. For example, authorities interstate and overseas use hand-held computers for enforcement, but they are not used here in New South Wales.

The fifth matter on which the Auditor-General commented was the appropriateness of the Police Service being involved in the enforcement of parking offences. To quote directly from the report, the Auditor General saw it as "an unwelcome distraction from the important duties of crime prevention and detection". That was a matter that very much concerned the Auditor-General. The sixth problem that the Auditor-General raised was that, in terms of good management, there was no linkage between enforcement arrangements and the collection of revenue, so that there was no incentive by the agency for enforcement. I am sure plenty of commuters would be grateful for that.

Many would take the view that poor arrangements for the enforcement of parking are a good thing, because people find it difficult to get a parking spot when visiting any number of locations around the busy city of Sydney. But that overlooks the difficulties that are visited upon local residents. For seven years I lived nearby in Darlinghurst. I had a car—perhaps I should not have had a car, given that I lived so close to the city—which I needed for my work, but it was regularly the case that I could not find a parking spot. Resident parking schemes were not properly enforced. I know that has been a council matter for some time, but it was symptomatic of the problem that inner city residents have. Inner-city residents face a similar problem when they drive to shops on

their local shopping strip, as there is no enforcement of parking arrangements. The Public Accounts Committee began the process in 1986, the Auditor-General followed it up in 1999, and now this legislation is before the House.

In essence, the legislation deals principally with three matters: revenue-sharing arrangements between State and local governments in relation to parking funds; arrangements to facilitate the transfer of parking patrol officers currently employed by the State into the employ of local councils; and clarification of local councils' entitlements to money derived from penalty notices. The Opposition does not oppose the thrust of this bill because it will lead to more efficient and effective parking enforcement by local councils, as is the case in other States. We are satisfied that the employment entitlements of parking patrol officers have been dealt with appropriately.

However, we have a problem with the revenue-sharing arrangements that the bill implements. Those concerns have been well outlined by the Deputy Leader of the Opposition, so I will not go over that ground again. They reflect the strong concerns expressed by the Local Government and Shires Associations on this issue. That body is worried that, although local councils will assume substantial responsibilities for parking enforcement and the employment of parking patrol officers, the legislation offers no protection to ensure that this is not just another example of cost shifting from State government to local government. That is the nub of this debate: local government is facing many problems as a result of cost shifting from the State Government to the local level.

Responsibilities are transferred but the capacity to fund them is not. That happened with enforcement of the Companion Animals Act, the Disorderly Houses Act and other Government legislation. That is why the Opposition, on behalf of councils across the State, will move amendments in Committee and, at that time, I will speak about the arrangements for North Sydney Council and South Sydney City Council, in particular. There is a strong case for dealing with those councils other than in the way suggested by the Government in this legislation and in its discussions with local government. We will seek to give effect to the wishes of North Sydney and South Sydney councils and the Local Government and Shires Associations in Committee.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [8.43 p.m.]: The Local Government Amendment (Enforcement of Parking and Related Offences) Bill is generating much heat according to the principle: the more money involved, the less debate occurs. We passed a \$140 million Olympic funding bill in 30 seconds, yet this legislation, which has a stake of about \$3.5 million per year indefinitely, is generating much heat and debate. The Australian Democrats are having difficulty understanding the situation. Local councils, particularly North Sydney Council and South Sydney City Council, believe the Opposition amendment to the bill will provide more money, but the Government has assured us that, as the amendment contains a drafting error—it assumes gross revenue rather than net revenue—councils will receive less money. The Opposition and the Government view the matter completely differently, and lobbyists from either side have predictably lined up behind them.

This bill emanates from the Audit Office, which suggests that the use of parking officers would be managed far better by local councils according to the philosophy of managing the urban precinct in the interests of better traffic flow, planning, access to retail premises, and so on. That sounds like a good idea. However, I understand that the Lord Mayor of Sydney, Frank Sartor, pushed for the bill as he wanted to control parking in Sydney—he takes a great interest in this subject. He is keen to see people enter and leave the city quickly in order to boost retail activity and prevent the build-up of huge amounts of through traffic. Mr Sartor negotiated a deal with the Government but, as local councils have come on board more slowly, he has been frustrated in his attempts to get the legislation moving because of ongoing negotiations with other councils. Mr Sartor is keen to see the bill proceed in its present form.

The smaller councils will receive the revenue, but they may lose in the short term if they do not get a great deal of revenue. The bill contains transitional provisions on this point. South Sydney City Council and North Sydney Council appear to be the sticking point. On the one hand, if viewed as extensions of the central business district, it can be argued that they should return the same amount of revenue as the city; but, on the other hand, they are keen to do what they can to maximise their funds by demanding all revenue—assuming that the Opposition amendment will give councils more money, which the Government denies.

I would like to see the money and responsibility transferred to local councils. I think local government is bearing an increasing burden as a result of State Government decisions—particularly in the areas of policing, looking after precincts and dealing with petty crime—and needs more revenue. I would like to help local councils perform their tasks. South Sydney City Council faces particular difficulties with homeless people—

although it has been pointed out that parking legislation should not be changed as a result; homelessness is a separate issue. The Government claims that local councils will receive more money under the legislation in its present form. If I can be persuaded that they will receive greater revenue as a result of the Opposition amendment, I will revise my position. However, I favour the principle of the bill: transferring control to local councils and making them responsible for their revenue.

**Reverend the Hon. FRED NILE** [8.48 p.m.]: The Christian Democratic Party supports the Local Government Amendment (Enforcement of Parking and Related Offences) Bill. The main purpose of this bill is to assist with the transfer of parking police to local government control, particularly in the metropolitan area but it may affect councils in other regions. The bill will enable the Treasurer to enter into arrangements with a local council for allocating between the council and the State parking penalties and fines that are recovered in proceedings instituted by the council. It will facilitate the employment by local councils of certain parking patrol officers formerly employed by the State. It will also clarify the entitlement of local councils to retain money derived from the penalty notices issued by its officers. The crossbenchers are concerned about the welfare of parking patrol officers. We have lobbied the Government about this issue and I believe we have achieved our objective—unless the Government has some ulterior motive of which we are not aware.

The Government has indicated that all superannuation entitlements of parking patrol officers will be transferred to the other jurisdiction. I understand that parking inspectors are now happy with the arrangements that have been made. The only people who are unhappy are the councillors and mayors of North Sydney and South Sydney councils. The Sydney City Council, which is led by Councillor Frank Sartor, willingly entered into an arrangement with the State Government to share equally the revenue derived from parking offences—50 per cent to the State Government and 50 per cent to the council. However, North Sydney and South Sydney councils did not agree to share that revenue. I understand the Government's reason for treating the city of Sydney as one unit: it has one policy for North Sydney, Sydney City and South Sydney councils and it has another policy for suburban and country councils. To me that is a logical policy. However, North Sydney and South Sydney councils do not want to give up 50 per cent of their share of the revenue derived from parking offences.

The amendment foreshadowed by the Opposition might be one way of solving that problem. That amendment proposes that that sharing arrangement applies only for five years. I gather that North Sydney and South Sydney councils—the two councils to which I referred earlier—have reluctantly accepted that they will retain 50 per cent of the revenue derived from parking offences and that 50 per cent of that revenue will go to the State Government for five years. That will give the Government time within which to readjust its budget, if it needs to do so, as the Government is claiming that, under this scheme, there could be a loss of some millions of dollars in revenue. Five years is enough time to make whatever adjustments are needed. I would not agree to a similar sharing arrangement being entered into in relation to other councils. I am given to understand from briefings I have had that it is not the intention of the Government to take 50 per cent of this revenue from other councils. The Opposition's amendment would remove the words "a council" from new section 694 (3), which states:

The Treasurer may enter into an arrangement with a council with respect to the allocation of any money paid or payable to the council from penalties and fines for parking and related offences recovered in proceedings instituted by council.

The Treasurer might change his mind and try to negotiate some sort of revenue deal with councils in order to gain some monetary benefit. If that is not the Government's intention, it should accept the Opposition's amendment to delete the words "a council" from new section 694 (3). It appears from that provision that the Government might want, at some later date, to enter into some sort of agreement to take from smaller councils 50 per cent of the revenue derived from parking offences. The Christian Democratic Party would not agree to that sort of arrangement. I hope the Government accepts the amendment proposed by the Opposition to delete the words "a council" from that provision. Arrangements should be entered into only with the three councils to which I referred earlier—Sydney City Council, North Sydney Council and South Sydney City Council. With those reservations, the Christian Democratic Party supports the bill in principle.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.55 p.m.], in reply: The Government's policy objectives in relation to on-street parking are enhanced road safety, enhanced traffic flow and equitable access to parking space for motorists. I am pleased to note that Opposition members are 100 per cent behind the Government's legislation and its decision to transfer responsibility for on-street parking enforcement to local government. The Opposition has indicated that it has no problems with the Local Government Amendment (Enforcement of Parking and Related Offences) Bill insofar as it relates to provisions for the future employment of parking patrol officers currently employed by the Police Service.

One of the main considerations in making arrangements for the transfer of this function to councils has been protecting the employment and entitlements of those who are currently employed by the Police Service as parking patrol officers. The function will be transferred only to councils that agree to offer employment to parking patrol officers currently employed in their areas. Salary rates will be at least equal to the officer's current salary rate. All leave entitlements will be paid out by the Police Service. Superannuation entitlements as at the date of transfer will be funded by the appropriate superannuation funds and superannuation coverage will continue through local government superannuation schemes.

Parking patrol officers who accept offers of employment from councils will be paid up to 20 weeks salary as a termination payment under the terms of the Employment Protection Regulation 1995. Also, in cases where parking patrol officers cannot be offered employment by councils for medical reasons, they will be paid up to 52 weeks salary on termination of their employment with the Police Service, in accordance with the Managing Displaced Employees policy. The Opposition is happy with these provisions for the future employment of parking patrol officers but it has taken exception to the other main provision in the bill, relating to sharing revenue from parking infringements between the State and councils.

The honourable member for Epping in another place moved a number of amendments to the bill. One of the amendments sought to limit, to Sydney City Council, North Sydney Council and South Sydney City Council, the councils with which the Treasurer may make an arrangement to share revenue Council—the issue referred to earlier by Reverend the Hon. Fred Nile. Another Opposition amendment sought to limit to a maximum of five years the duration of revenue sharing with North Sydney Council and South Sydney City Council. An amendment moved by the National Party required all revenue collected from infringements to be shared equally between North Sydney and South Sydney City councils and the State.

Those amendments are rejected because they are financially irresponsible. Net revenue from parking infringements issued by parking patrol officers currently employed by the Police Service is paid into the Consolidated Fund. In determining future arrangements for the enforcement of on-street parking, the Government considered the potential impact on the Consolidated Fund and hence future State budgets. It would be irresponsible not to do so. The Government took into account the findings of the Auditor-General to the effect that the parking enforcement function, as managed by the New South Wales Police Service, is not as efficient or effective in other States, nor is it as efficient and effective as when performed by council employees in some council areas where the commissioner has authorised councils to undertake the function.

Consequently, the Government decided to give councils the authority to undertake parking enforcement. Clearly, one inevitable outcome of a more efficient and effective performance of the parking performance function will be increased revenue. Many councils stand to gain a substantial ongoing revenue stream as a result of the Government's decision to hand over the parking enforcement function to them. In fact, the interdepartmental committees examining these issues considered that it is likely that better management of the function would result in a revenue stream sufficient to maintain the current contribution to the Consolidated Fund as well as providing councils with a useful revenue stream.

The Opposition's amendment No. 2, which would limit the sharing of revenue to a period of five years with North Sydney and South Sydney City councils, does not make sense. It would mean that State revenue would drop in five years time. Under the Government's proposal, everybody wins. Under the Opposition's proposed amendments, only those councils win and the Government is left with less revenue with which to fund services to taxpayers. The Opposition's proposed amendment No. 1 would limit the councils with which arrangements to share revenue can be made to Sydney City Council, North Sydney Council and South Sydney City Council, yet those three councils are the ones that stand to gain the most from parking enforcement.

I understand that it is expected that revenue-sharing arrangements with those three councils will be sufficient to ensure the maintenance of the current revenue stream to the Consolidated Fund. It would be foolish for the Government to limit itself by legislation to making arrangements with those councils in case they are not interested in taking on the function under the terms decided by the Government. If those councils are not interested, the Government needs the flexibility to enter into revenue-sharing arrangements with other councils that are interested in taking on the parking enforcement function. The amendment which refers to allocating the money from parking infringements equally between those councils and the State is an inappropriate amendment because it would disadvantage those councils compared with the arrangements proposed by the Government.

The Government proposes that councils take their costs out of gross revenue and then share what is left with the State. The Opposition's proposal would see gross revenue shared between the State and those councils.

Councils would then have to pay their costs out of their share. In conclusion, I emphasise that the main reason for transferring the function of parking enforcement to councils is to ensure that parking enforcement meets the Government's policy objectives of enhanced road safety and traffic flow and equitable access to parking space for motorists. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

### **In Committee**

**Clauses 1 to 3 agreed to.**

### **Schedule 1**

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [9.00 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo, on the proviso that the questions on the amendments are put seriatim:

No. 1 Page 3, schedule 1, line 8. Omit "a council". Insert instead "the council of Sydney, North Sydney or South Sydney".

No. 2 Page 3, schedule 1. Insert after line 11:

- (4) An arrangement with the council of North Sydney or South Sydney:
  - (a) may not be entered into after the end of the period beginning on the date of assent to the *Local Government Amendment (Enforcement of Parking and Related Offences) Act 2001* and ending on the fifth anniversary of that date, and
  - (b) if entered into during that period, ceases to have effect at the end of that period, and
  - (c) must provide for the money to which it applies to be allocated in equal portions between the council and the State.

Whilst the arguments for both the amendments overlap, they are very different amendments. Amendment No. 1 amends new subsection (3) of section 694 by omitting "a council" and inserting instead "the council of Sydney, North Sydney or South Sydney". As drafted new subsection (3) states:

The Treasurer may enter into an arrangement with a council with respect to the allocation of any money paid . . .

Instead of the Treasurer being able to negotiate with or bully every small council in the State on an individual basis, our amendment No. 1 will revert the legislation to the Government's stated intention. The Government briefed the crossbenchers that it was interested only in the money from the three major councils of Sydney, North Sydney and South Sydney. So that the Government is as good as its word in the briefing, amendment No. 1 removes the Treasurer from negotiating on an individual basis with each of the smaller councils. So for all the work the smaller councils will do, they will keep the money. That is the aim of amendment No. 1 inserting "the council of Sydney, North Sydney or South Sydney". The word "or" in that amendment means that an arrangement may be entered into with any of those councils on an individual basis.

Amendment No. 2 provides for the arrangement that may be entered into with North Sydney or South Sydney councils. Sydney City Council is not included in that amendment because Frank Sartor has already entered into an agreement with the Treasurer. We will not interfere with that arrangement. It may be better; it may not be. I suspect it may not be as good as the arrangement proposed in our amendment, given that Frank Sartor sent a letter indicating he does not want the other councils to get what we have put forward. Perhaps I am being a little unkind. Far be it from me to be unkind. Paragraph (a) of our proposed subsection (4) limits the arrangement to five years. At the end of five years North Sydney and South Sydney councils will revert to being the same as the other councils in the State, and the council of the city of Sydney, Frank's mob, will continue with whatever great deal he has done. Paragraph (c) states that the arrangement:

must provide for the money to which it applies to be allocated in equal portions between the council and the State.

The Government and its advisers would have us believe that this will put the councils in a worse situation. Treasury advisers have told the crossbenchers that they should not support this amendment because South Sydney and North Sydney councils will be worse off. Do you find that a bit hard to swallow? I do, because it

does not change any other part of this bill. The Hon. Ian Macdonald said the Government will not support this amendment because it puts North Sydney and South Sydney councils in a worse situation.

**The Hon. Richard Jones:** It does.

**The Hon. DUNCAN GAY:** The Hon. Richard Jones mouths the Government's line and says it makes the situation worse. It does not change any other part of the bill. No other part of the bill is influenced by this amendment; it is 50 per cent of whatever else is in the bill. It does not change one other thing. The Hon. Richard Jones believes the Government and its advisers when they tell him to oppose the amendment because it makes it worse for North Sydney and South Sydney councils.

The President of the Local Government and Shires Associations and representatives of North Sydney and South Sydney councils have asked members to support the amendment. Clover Moore, the local member representing South Sydney, has said to support it. The mayor and councillors of South Sydney City Council have also said to support it. The mayor of North Sydney Council has asked members to support the Opposition amendment because it is better for the council. Yet the Government has told the Hon. Richard Jones otherwise, and the Hon. Richard Jones believes the Government. Should we believe the Hon. Richard Jones? No; he is having a lend of me. No-one would believe that. It is a lot of rot.

**The Hon. RICHARD JONES** [9.06 p.m.]: New subsection (3) of section 694 refers to:

... any money paid or payable to the council from penalties and fines for parking and related offences recovered in proceedings.

That is the gross amount, which last year was \$26 million. That is the gross, not the net. The actual net amount, after expenses, will be much less. The councils will be worse off.

**The Hon. Duncan Gay:** That remains.

**The Hon. RICHARD JONES:** It does not remain. It is not 50 per cent of the net; it is 50 per cent of the gross.

**The Hon. Duncan Gay:** It does not take that out; that remains. That is where you are wrong.

**The Hon. JOHN TINGLE** [9.07 p.m.]: I understand what the Opposition is trying to do, and its amendments have a great deal of merit. I am attracted to the amendments, but I am still uncomfortable despite assurances I have been given. I believe that amendment No. 1 is capable of a very limited interpretation that might go against what the Opposition is trying to achieve. The Deputy Leader of the Opposition has explained to me what the amendment means.

**The Hon. Duncan Gay:** More importantly, what Parliamentary Counsel means.

**The Hon. JOHN TINGLE:** I understand that Parliamentary Counsel has worded it this way. If this amendment succeeds, subsection (3) of section 694 would state: "The Treasurer may enter into an arrangement with the council of Sydney, North Sydney or South Sydney with respect to the allocation of any money paid", and so on. That would be capable of interpretation to mean that the Treasurer may only enter into an arrangement with one of those three councils. By the use of the word "or" the councils are given as alternatives, not as additives. I have spoken to the Deputy Leader of the Opposition about it and he says it means "at one time", but those words are not in the amendment. If the amendment said, "the Treasurer may enter into an arrangement with the council of Sydney, North Sydney or South Sydney at any one time", that would be another matter. However, the amendment does not say that. In later interpretation, I believe it could be taken to limit the Treasurer's capacity to deal with the councils. I ask for clarification.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [9.08 p.m.]: I made it quite clear when speaking to the amendment that all three councils could negotiate. My speech could be used to assist with the intention if there were need to determine this matter. I do not believe it needs clarification, but my speech could be used to clarify the intention.

**The Hon. DON HARWIN** [9.09 p.m.]: In supporting the amendment I echo the statements of the Deputy Leader of the Opposition and reinforce that amendment No. 2 does not change the underlying revenue sharing arrangement. I cannot agree with the Hon. Richard Jones on that point. The more important issue that has concerned me, and that has led to a number of representations to me, is why North Sydney Council and



South Sydney City Council have been singled out. The Hon. Ian Macdonald made the point fairly that North Sydney Council and South Sydney City Council are larger than some rural councils. What he has not addressed is why those two councils have been selected, compared with similar councils within the Sydney metropolitan area. Why South Sydney? There is no greater case for including South Sydney City Council than virtually any other suburban council with a significant entertainment precinct.

**Reverend the Hon. Fred Nile:** It is part of the main body of Sydney.

**The Hon. DON HARWIN:** I beg to disagree with Reverend the Hon. Fred Nile. South Sydney does not have a central business district in any respect. The shopping area around Kings Cross and Darlinghurst precincts are not, in fact, part of the Sydney central business district and never have been. They are very much distinct areas and similar to Campbell Parade, Bondi Beach, for example. Waverley municipality has not been brought within the ambit of this bill. North Sydney is different to South Sydney. North Sydney Council area has a very significant central business district. With regard to North Sydney Council, we have to ask: Why North Sydney but not Parramatta? Why North Sydney but not Willoughby? Why North Sydney but not Hurstville? In my view there is a clear equity issue with regard to the residents and ratepayers in the council areas of North Sydney and South Sydney. The arrangements to be made under this bill are an inappropriate move on the part of the Government.

I cannot but reflect on the fact that North Sydney Council has an independent mayor and South Sydney City Council has an independent mayor, whereas Parramatta City Council and Waverley Council have Labor mayors. Perhaps that is why North Sydney and South Sydney have been singled out. As I said, that is inappropriate. Frankly, I consider that North Sydney Council and South Sydney City Council have been exceptionally generous in their offer to continue revenue sharing with the State Government for the period indicated in the amendment. There is no case for treating North Sydney and South Sydney any differently from Parramatta, Hurstville or Waverley councils. I have outlined why I believe there are parallels. Honourable members should understand that those councils have both been integrally involved in discussions with the Opposition in the preparation of these amendments. They have been through the principles.

Both are significant councils with good advisers available to them, including legal advisers, and they have signed off on these amendments. They are happy with the amendments. More importantly, the Local Government and Shires Associations have also been involved in the preparation of these amendments, and also support them. The Opposition is dealing with the issue of cost shifting between the State Government and local government. The Opposition is attempting to include protections in the bill to ensure that councils remain viable. I strongly believe these amendments are absolutely critical to ensure this bill can take us forward as an appropriate regime for the enforcement of parking arrangements into the future.

**The Hon. Dr PETER WONG** [9.14 p.m.]: As Reverend the Hon. Fred Nile outlined in a letter to me, this bill does not make sense. To start with there is nothing in the bill that says that there will be equal portions for council and the Government. There are no such words. Opposition amendment No. 2 states in part that an arrangement with the council of North Sydney or South Sydney must provide for the money to which it applies to be allocated in equal portions between the council and the State. The words "equal portions" do not appear in the bill. New section 694 (4) states in part:

Any money to which such an arrangement applies is to be apportioned between the council and the State in accordance with the arrangement ...

Does that mean equal portions? It does not really mean that. It could be 75:25 or 90:10. So far as net and gross are concerned, again with due respect to my good friend the Hon. Richard Jones, nothing in the Government's legislation refers to gross or net. Therefore, what in the Opposition's amendment is applicable to the Government's legislation? Perhaps the Government could answer that question.

**The Hon. RICHARD JONES** [9.15 p.m.]: I want to go through the figures just one more time to give an excellent example. I have some figures from the Government on the actuals for the year 2000-01. The figure is \$22 million total revenue. This is the total amount referred to in the phrase "any money paid or payable to the council from penalties and fines". The costs involved in collecting that \$22 million were the costs of PEOs of \$7.2 million, processing costs of \$7.9 million and other costs. Essentially the net, before redundancy and severance payments, is \$5.2 million. In that instance the Government would receive half of the \$5.2 million, which is about 10 per cent, not 50 per cent of the \$22 million.

The Opposition's amendment will give the Government 50 per cent of the gross figure. If we applied this figure of \$22 million to South Sydney City Council, for example, the Government would get \$11 million and South Sydney City Council would get \$11 million. But South Sydney City Council has costs of

\$15.1 million, so it is going to lose \$4 million. The council has to pay for the processing costs, the parking police and all of the costs. If you have been given half of council's revenue but you lumber it with all the costs, the council is going to be worse off. The Government will be laughing. It will love the Opposition for this. "Let it go through," I would say if I were the Government.

**Reverend the Hon. Fred Nile:** Why is the Government opposing it?

**The Hon. RICHARD JONES:** Because this is a crazy arrangement. If this is going to work, the Opposition's amendment has to be amended. I move the following amendment to the Opposition's amendment:

After the word "State" insert the words "after expenses have been deducted".

The Opposition's amendment might then make a bit more sense.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [9.17 p.m.]: The Opposition does not believe the amendment of its amendment is necessary, but would certainly be willing to accept the amendment moved by the Hon. Richard Jones.

**Reverend the Hon. Fred Nile:** Why not make it "net" income?

**The Hon. DUNCAN GAY:** We are happy with what the Hon. Richard Jones has moved. If it is going to include the word "net" just to clarify the matter, I will be happy to incorporate that into the amendment that I moved on behalf of the Opposition.

**The Hon. Ian Macdonald:** Half the net.

**The Hon. DUNCAN GAY:** Yes, the net figure. The Government voiced concern that the councils were losing out. Given the Government's concern expressed to the crossbenchers and the fact that the Hon. Richard Jones has picked it up, who are we in the Opposition to object to the concern for local government in respect of this matter? The Opposition believes it is an unnecessary addition, but let us be sure about it. The Government's concerns would have been addressed anyway, because our new subsection (4) goes into place and the existing subsection (4) that the Government is concerned about would have remained but would have become the new subsection (5). Given the concern expressed by the crossbenchers, the Opposition believes it is better to err on the safe side. The addition of the few words to clarify that it is a net figure are important and we are certainly willing to accept them.

**Reverend the Hon. FRED NILE** [9.19 p.m.]: To clarify the situation, the amendment contains the word "equal " because nowhere does the bill say 50 per cent. We are discussing 50 per cent, but I cannot find it mentioned anywhere in the bill. The bill does not even say equal proportions. This amendment will make it clear that 50 per cent of the net income is divided.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [9.19 p.m.]: The answer to questions about North Sydney and South Sydney councils is that they are by far the largest earners of parking revenue. In 1999-2000, 50 per cent of infringement income came from North Sydney and South Sydney councils and the city council.

**The Hon. Patricia Forsythe:** I bet that Chatswood and Parramatta are way up there on the list.

**The Hon. IAN MACDONALD:** Parramatta is well down on the list. We are talking about the three councils from which the vast majority of parking infringement revenue comes. That is why there is a concentration in those areas, despite what the Hon. Don Harwin said. It is sensibly considered because it concentrates on where the revenue is. Originally, it was intended that the Government would share 50 per cent with all councils, but on further consideration it would have created great problems when applied to smaller councils. The proposal embedded in the legislation seeks to protect the majority of councils, especially smaller councils. That is why it is couched in these terms. The Government has no great objection to the amendment moved by the Hon. Richard Jones, but points out that after five years considerable revenue difficulties would arise.

**The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin):** Order! The Hon. Duncan Gay has moved Opposition amendments Nos 1 and 2 in globo, but I will put the questions on them seriatim. The Hon. Richard Jones has moved an amendment to Opposition amendment No. 2. I propose to put Opposition amendment No. 1, then the amendment of the Hon. Richard Jones and then Opposition amendment No. 2.

**Question—That Opposition amendment No. 1 be agreed to—put.**

**The Committee divided.**

**Ayes, 18**

Mr Breen	Mr Harwin	Mr Ryan
Dr Chesterfield-Evans	Mr R. S. L. Jones	Dr Wong
Mr Cohen	Mrs Nile	
Mrs Forsythe	Reverend Nile	
Mr Gallacher	Mr Oldfield	<i>Tellers,</i>
Miss Gardiner	Mr Pearce	Mr Jobling
Mr Gay	Ms Rhiannon	Mr Moppett

**Noes, 13**

Dr Burgmann	Mr Johnson	Mr Tsang
Ms Burnswoods	Mr M. I. Jones	
Mr Della Bosca	Mr Macdonald	<i>Tellers,</i>
Mr Dyer	Ms Tebbutt	Mr Primrose
Ms Fazio	Mr Tingle	Mr West

**Pairs**

Mr Egan	Mr Colless
Mr Hatzistergos	Mr Lynn
Mr Kelly	Dr Pezzutti
Mr Obeid	Mr Samios

**Question resolved in the affirmative.**

**Opposition amendment No. 1 agreed to.**

**Amendment of the Hon. Richard Jones to Opposition amendment No. 2 agreed to.**

**Question—That Opposition amendment No. 2 as amended be agreed to—put.**

**The Committee divided.**

**Ayes, 17**

Mr Breen	Miss Gardiner	Mr Pearce
Dr Chesterfield-Evans	Mr Gay	Ms Rhiannon
Mr Cohen	Mr Harwin	Dr Wong
Mr Colless	Mr R. S. L. Jones	<i>Tellers,</i>
Mrs Forsythe	Mrs Nile	Mr Jobling
Mr Gallacher	Reverend Nile	Mr Moppett

**Noes, 14**

Dr Burgmann	Mr Johnson	Mr Tsang
Ms Burnswoods	Mr M. I. Jones	Mr West
Mr Della Bosca	Mr Macdonald	<i>Tellers,</i>
Mr Dyer	Ms Tebbutt	Mr Oldfield
Ms Fazio	Mr Tingle	Mr Primrose

**Pairs**

Mr Lynn	Mr Egan
Dr Pezzutti	Mr Hatzistergos
Mr Ryan	Mr Kelly
Mr Samios	Mr Obeid

**Question resolved in the affirmative.**

**Opposition amendment No. 2 as amended agreed to.**

**Schedule 1 as amended agreed to.**

**Title agreed to.**

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

## **STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL**

### **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) [9.37 p.m.]: I move:

That this bill be now read a second time.

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

### **Leave granted.**

The Statute Law (Miscellaneous Provisions) Bill continues the well-established statute law revision program that is recognised by all members as a cost-effective and efficient method for dealing with amendments of the kind included in the bill. The form of the bill is similar to that of previous bills in the statute law revision program. Schedule 1 contains policy changes of a minor and non-controversial nature that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending bill. The schedule contains amendments to 22 Acts. I will mention some of them to give honourable members an indication of the kind of amendments that are included in the schedule.

The bill amends the Art Gallery of New South Wales Act 1980 to increase the number of trustees of the Art Gallery of New South Wales trust from nine to 11. The bill amends the Environmental Planning and Assessment Act 1979 to make it clear that a Crown applicant for development consent is not able to apply to the consent authority for a review of a determination of the development application where that determination was made in accordance with the written approval of the Minister. The bill also amends the Act so as to ensure that a notice of a right to appeal against an order requiring a person to do or refrain from doing certain things specified in the table to section 121B of the Act is consistent with the actual right of appeal conferred by the Act in that only the person on whom the order is served has such a right.

The bill amends the Freedom of Information Act 1989. Currently, the Act defines "public authority" and "public office" as including bodies and offices established for a public purpose by or under the provisions of a legislative instrument. The proposed amendments will extend the meanings of "public authority" and "public office" to include bodies—such as the Supreme Court of New South Wales—and offices that were established by royal charter and continued by or under such an instrument. However, the amendments will not extend the operation of the Act to the judicial functions of any court or tribunal. The bill also amends the Harness Racing New South Wales Act 1977 to restore words omitted in the restatement of the existing rule-making functions by the Harness Racing New South Wales Amendment Act 1998. The restoration removes any possible argument—based on section 27 (2) of the Act—that no rules can be made under the Act despite the extensive powers to make rules conferred by the Act.

The bill also makes a number of minor amendments to the Protection of the Environment Operations Act 1997. I will mention some of them. The Act is amended so as to enable a notice requiring a person to furnish records, information and reports in connection with any matter relating to a regulatory authority's responsibilities and functions under the Act to be served on a person even if the person is, or the matter occurs or is located, outside New South Wales, provided that the matter affects the environment of New South Wales. The Act is also amended so as to enable a person to appeal against a decision by a regulatory authority, such as the Environment Protection Authority, to attach new conditions to, or to vary any existing conditions of, a revocation, suspension or surrender of a licence.

The Ombudsman Act 1974 is amended so as to facilitate the carrying out of the Ombudsman's functions under the Act. In particular, the proposed amendments will enable the Ombudsman to accept oral complaints if the Ombudsman considers it appropriate to do so. Currently, complaints to the Ombudsman must be in writing. Other amendments to the Ombudsman Act 1974 will enable the Ombudsman to notify orally, in appropriate cases, a person who complained about a public authority of the Ombudsman's refusal to conciliate, to investigate or to continue to investigate the complaint. The proposed amendments will also enable the Ombudsman to disclose to a public authority information obtained by the Ombudsman in discharging functions under the Act with respect to a complaint against or relating to the public authority. The amendments to the Radiation Control Act 1990 will enable the annual report of the Radiation Advisory Council to be made publicly available by the Clerks of the Parliament even if a House of Parliament is not sitting when the Minister seeks to table the report.

The Residential Tenancies Act 1987 is also amended. Currently, that Act provides for the abatement of rent and a right by either party to a residential tenancy agreement to terminate that agreement where the agreement is frustrated—for example, the

premises the subject of the agreement are destroyed or rendered partly or wholly uninhabitable. The proposed amendments will enable either party to apply to the Residential Tribunal for a determination of the reduced amount of rent payable if the agreement is not terminated. The proposed amendments to the Residential Tenancies Act 1987 will also enable a tenant under a residential tenancy agreement to apply to the Residential Tribunal for a refund of overpaid rent on the basis that a rent increase was not notified in the manner required by the Act.

The Sydney Water Act 1994 is amended so as to make it clear that a contract relating to service availability and drainage charges is a customer contract under the Act. Accordingly, provisions such as section 61 of the Act—which provides that a successor in title to certain land is liable for any unpaid contract charges relating to the land—will apply to such contracts. The Water Management Act 2000 is also amended in a number of respects. I will now mention some of those amendments. Section 97 (2) of the Act currently provides that a drainage work approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that minimal harm will be done to any water source, or its dependent ecosystems, as a consequence of the construction or use of the proposed drainage work. The Act contains a similar provision with respect to flood works. Section 97 (2) is amended so it applies to all water management works.

Other amendments to the Water Management Act 2000 will ensure that the Minister, who has the control and management of certain water supply works, has the same protections with respect to the taking of water from such works as are provided to other bodies that control and manage such works. The proposed amendments will also enable any person, and not just a land-holder, to whom a direction is given under part 1 of chapter 7 of the Act—for example, a direction to stop work where an unlawful activity is occurring—to appeal to the Land and Environment Court against the Minister's decision to give the direction.

The last schedule 1 amendment that I will mention is the amendment to the Technical and Further Education Commission Act 1990. That Act is amended so as to enable the TAFE Commission to exercise its functions under the Act outside New South Wales. Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that Parliamentary Counsel considers are appropriate for inclusion in the bill. Examples of amendments in schedule 2 are those arising out of the enactment of other legislation and those updating references to the names of bodies and offices.

Schedule 3 makes a number of amendments to facilitate the implementation of standard generalised markup language [SGML] by Parliamentary Counsel's office, which is responsible for the compilation and maintenance of the New South Wales legislation database. The new system will improve the portability and accessibility of legislative data. Formatting features of current legislation that are incompatible with the proposed system are to be removed. Schedule 4 repeals a number of Acts and provisions in Acts. The Institute of Rural Studies Act 1973 and four Appropriation Acts, which are no longer of practical utility, and over 25 Statute Law (Miscellaneous Provisions) Acts are repealed. The schedule also repeals amending Acts enacted in 1999 or earlier that contain no substantive provisions that need to be retained.

The Acts that were amended by the Acts or provisions being repealed are up-to-date on the legislation database maintained by Parliamentary Counsel's office and are available electronically. Schedule 5 contains provisions dealing with the effect of amendments on amending provisions, savings clauses for the repealed Acts and a power to make regulations for savings and transitional matters, if necessary. The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts concerned.

Rather than repeat the information contained in those notes, I invite honourable members to examine the various amendments and accompanying explanatory material and, if any concern or need for clarification arises, to approach me regarding the matter. If necessary, I will arrange for government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill. I commend the bill to the House.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [9.37 p.m.]: I lead for the Opposition on the Statute Law (Miscellaneous Provisions) Bill, which introduces a number of minor and technical amendments to a cross-section of Acts. The amendments do not involve any substantive changes to the law or to the practice of government. One such amendment, which seeks to extend the terms in office of the Police Integrity Commissioner and the Assistant Commissioner, is supported by the Opposition. Security of tenure for the commissioner and assistant commissioner is imperative to allow Judge Urquhart to continue the commission's Operation Malta, which is looking into the Police Service's Crime Management Support Unit. This is a very interesting matter for the Parliament to consider with regard to gauging and monitoring reform of the New South Wales Police Service.

Honourable members might recall that the Crime Management Support Unit [CMSU] received some notoriety. I recall that 12 months ago the Commissioner of Police appeared before the 2000-01 estimates committee and spoke about that unit. He detailed the work it had committed itself to and assured members of that committee that everything was well under way, was in hand, and was going as planned. Only a few months ago we heard of evidence given at the Police Integrity Commission by Assistant Commissioner Mal Brammer, of the internal affairs branch as it is known. He detailed how the CMSU was formed only the night before he appeared before that estimates committee. Recently, members of that committee, myself included, were interested to pursue that issue with the Commissioner of Police. We were assured that everything was in order and that the evidence given by the commissioner 12 months ago was true and correct and there should not be a suggestion that the committee was misled in any way.

The final report of Operation Malta, one would hope, will be the culmination of the inquiry by the Police Integrity Commission into the Police Service's CMSU. All honourable members would look forward to

the release of that report. I look forward to clarification of whether the estimates committee was misled last year by Assistant Commissioner Brammer in relation to the formation of the CMSU on the night before the commissioner appeared before that committee. I look forward to clarification of whether that evidence, when given to the Police Integrity Commission, was false, knowingly false, or accidentally false.

**The Hon. John Jobling:** I bet they won't tell anyone.

**The Hon. MICHAEL GALLACHER:** I have complete faith in Judge Urquhart to expose exactly what has happened with the CMSU. I will be very disappointed if the evidence given before the Police Integrity Commission did not expose this discrepancy, just as the answers given to the 2000-01 estimates committee did. Under the provisions of the Police Integrity Commission Act Judge Urquhart was appointed for five years, and that appointment will expire on 10 August. However, as the hearings into Operation Malta are unlikely to be concluded by that time, the Government is rightly seeking to extend Judge Urquhart's appointment.

On 28 June the Opposition first raised this problem when the shadow Minister for Police, that hard-working member for Epping in the other place, introduced a private member's bill to extend Judge Urquhart's term of service for a further twelve months, or until the completion of the Operation Malta investigation, whichever occurred first. It is pleasing that the Government has at least come to the party, and we can now be assured that Judge Urquhart will conclude his very important investigation without hindrance. The Opposition has some concerns about the large number of last minute amendments proposed by the Government.

**The Hon. John Jobling:** I have never seen so many.

**The Hon. MICHAEL GALLACHER:** The Hon. John Jobling, who has considerable experience in this House over the years with statute law, said he has never seen so many amendments. The 11 proposed amendments seek to omit certain sections from and insert one section into the statute law legislation. A number of non-Government members, including the Hon. Don Harwin and the Hon. Malcolm Jones, have expressed some concern about the harness racing industry.

**The Hon. John Della Bosca:** It's all right, we will fix it.

**The Hon. MICHAEL GALLACHER:** Once again the Special Minister of State interjects by saying, "It's all right, we will fix it." That is the very same comment members heard during debate on the workers compensation legislation and reform of the Motor Accidents Authority. The moment he makes such a comment the alarm bells ring. We would all be more confident if he did not interject; then we could be sure that everything was absolutely fine with the legislation. The Hon. Don Harwin has indicated that the Government has agreed in Committee to take the harness racing aspect from the bill. However, I commend the contributions of the Hon. Don Harwin and the Hon. Malcolm Jones, which will clarify the discrepancies in this bill. The Opposition does not oppose the bill.

**The Hon. RICHARD JONES** [9.46 p.m.]: The Statute Law (Miscellaneous Provisions) Bill makes amendments to various Acts. The amendments that have implications for the environment relate to the Environmental Planning and Assessment Act 1979, the Fisheries Management Act 1994, the Freedom of Information Act 1989, the Local Government Act 1993, the Ombudsman Act 1974, the Protection of the Environment Operations Act 1997, the Statute Law (Miscellaneous Provisions) Act 2000, and the Water Management Act 2000.

I do not have any concerns about the amendments proposed to the Environmental Planning and Assessment Act, the Freedom of Information Act, the Local Government Act and the Protection of the Environment Operations Act. However, the Environmental Defenders Office, through the Environmental Liaison Officer, has registered the following concerns about the proposed amendments to the Fisheries Management Act, the Ombudsman Act, the Statute Law (Miscellaneous Provisions) Act and the Water Management Act. Section 221B of the Fisheries Management Act enables the director of New South Wales Fisheries to grant a licence authorising an action that is likely to result in harm to a threatened species, population or ecological community, or damage to a habitat.

Section 221B (4) of the Act allows a licence to authorise specified persons, in addition to the person to whom the licence is granted, to do the things authorised by the licence. There is a reasonable argument that a specified person is a person named on the licence to be a specified person. However, the amendment proposed in this bill inserts a new subsection 221B (4), that will allow a licence to authorise specified persons by

reference to a particular class or description. This amendment is likely to significantly increase the number of persons who may exercise rights under a licence, increase uncertainty as to who is authorised to exercise rights under a licence and make enforcement of the licence more difficult.

The proposed amendment to section 15 of the Ombudsman Act will allow the Ombudsman to inform a complainant orally of a decision to either not investigate conduct or to discontinue an investigation, and the reasons for that decision. That provision may reduce the transparency of the process. The amendment proposed to the Statute Law (Miscellaneous Provisions) Act will delay the repeal of the School Forest Areas Act 1936 by two years to 30 June 2003. If that amendment is not made, the School Forest Areas Act will be repealed as from 30 June 2001.

The proposed amendment to section 60 of the Water Management Act will significantly affect the priority of environmental flows where severe water shortage orders under section 60 (2) are in place. Currently, the Act provides that in those circumstances the first priority is given to the needs of major utilities and local water utilities in relation to domestic water supplies and the needs of persons exercising basic land-holder rights. The needs of the environment are second priority. The needs of irrigation corporations, private irrigation boards and private water trusts may be either third or fourth priority, depending upon the nature of the licence that is held.

The proposed amendment will mean that water required by irrigation corporations, private irrigation boards and private water trusts in relation to domestic water supplies will have a higher priority than the needs of the environment. As the phrase "domestic water supplies" is not defined, this amendment could result in a significant loss of water for the environment where a significant water shortage order has been made.

The proposed amendments to sections 320 and 321 of the Act would prevent an efficiency review or the appointment of an administrator for water supply authorities listed by the Minister in the specified schedule. Items [50] and [51] of schedule 1.22 would allow the Minister to declare by regulation that certain activities do not constitute an aquifer interference activity or a controlled activity. Such a declaration would exempt the specified activity from the controls in the Act relating to aquifer interference activities and controlled activities. Item [55] would allow the Minister to declare by regulation that specified land is not waterfront land, thereby avoiding the restrictions that otherwise apply to waterfront land.

I am pleased to report, however, that the Government has been true to its word and agreed to remove any amendments on which concerns are raised that cannot be resolved. As the concerns expressed have not been able to be resolved during discussions between representatives of my office, the Environmental Defender's Office, the Environment Liaison Office, the Ombudsman's Office, the Office of the Minister for Land and Water Conservation, the Office of State Forests and the Premier's Office in relation to item [6] of schedule 1.5, which amends section 221B (4) of the Fisheries Management Act 1994, item [4] of schedule 1.10, which amends section 50 of the Ombudsman's Act 1974, items [26], [27], [50] and [55] of schedule 1.22, which amend sections 320 and 321 and the dictionary of the Water Management Act 2000, I understand that the Government will move to delete those amendments.

I understand also that, in order to allay concerns raised about those amendments, the Government will amend item [1] of schedule 1.18, which amends the Statute Law (Miscellaneous Provisions) Act 2000 to ensure that the proposed delay of the repeal of the School Forest Areas Act 1936 will be retrospective, and that it will amend item [5] of schedule 1.22, which amends the Water Management Act 2000 to ensure that "local water utilities" will only be omitted and replaced with ", local water utilities, irrigation corporations, private irrigation boards and private water trusts" where first appearing in section 60. I should like to thank the Minister's representatives for their co-operation in this matter and commend the Government for upholding the tradition of only including non-controversial amendments in statute law bills.

**The Hon. DON HARWIN** [9.52 p.m.]: Debate on this bill is obviously not the occasion for a review of why we have statute law revision. However, a reading of the Minister's second reading speech at the time statute law revision was introduced in 1984 provides some background to the reason I speak to the bill. On that occasion the Hon. Paul Landa, as Attorney General, made it clear that the reason for statute law revision is twofold: first, to look at minor technical changes; and second, to look at minor policy amendments. It is a very worthwhile process: it saves Parliament a lot of time, and it ensures that we do not have the program unnecessarily bogged down by a large number of small Acts.

Concern has been expressed about schedule 1.7, which amends the Harness Racing New South Wales Act. That concern arises from an inquiry conducted by the Regulation Review Committee and an excellent

report, report No. 15/52, dated May 2001, which has now been issued. Members of the Legislative Council do not have the opportunity to take note of Regulation Review Committee reports unless we do so on private members' day. I believe it is therefore important to place on record an acknowledgment of the excellent efforts of Jim Jefferis, the director of the Regulation Review Committee, and Greg Hogg, the legal adviser to the committee, in assisting the committee with its work. I am sure those sentiments would be echoed by my colleagues the Hon. Malcolm Jones and the committee's deputy chairperson, the Hon. Janelle Saffin.

Schedule 1.7 was included in the Act only because during the Regulation Review Committee's inquiry into the Harness Racing Appeals Regulation 1999 held earlier this year the committee pointed out to the Department of Gaming and Racing that problems had emerged which effectively made the New South Wales harness racing rules invalid. The amendment to the Act became necessary to overcome those problems. Essentially, the committee recommended to the Minister for Gaming and Racing that he address the inconsistency in the Harness Racing Act relating to the making of rules and regulations. The committee recommended that the Act be amended to clarify the legal status of the harness racing rules but with due regard to existing rights. Secondly, the committee recommended the repeal of section 10A (2) so that any conflict between a regulation and a rule could be resolved in accordance with section 28 of the Act, which states that if there is any inconsistency between the regulations and the rules, the regulations shall prevail.

Subsequently, on 28 March, Mr Peter Baldwin, the Assistant Director of Racing, gave evidence before the committee when he basically agreed with the committee, and said words to the effect of, "Thank you very much for pointing this out. We will deal with it by way of statute law revision." That is how the matter came before Parliament. The Regulation Review Committee was quite clear in its recommendations. It said that in dealing with the inconsistency that caused this problem the Government should have due regard to existing rights. The problem that has been pointed out to the committee in a briefing note, which I am sure other members will refer to, and which I personally agree with, is that existing rights have not been properly considered in putting together the amendment that is before the House by way of this bill.

Firstly, the most important feature of the bill is retrospectivity. Retrospective legislation, whenever it is before Parliament, is a matter that should gravely concern every member. It is something that on occasion simply must be done, but it should not ever be considered to be a matter of little consequence. It is not, on any possible construction, a minor technical change. It could be argued that it is a technical change, but it is not a minor technical change when it contains an element of retrospectivity. The committee officers gave advice that in their view—a view that I believe was supported by all committee members—if there was to be an element of retrospectivity, it should be the subject of a substantive bill, not statute law revision.

Secondly, the committee's concern for existing rights is based on the fact that 16 disqualified persons, that is, drivers and trainers, in harness racing will have their rights in some way affected by this legislation. Without referring to individual cases, it is not possible to say how this regulation will impact upon each person. Statute law revision is supposed to be only a minor technical change, and therefore it is not entirely appropriate that we should deal with it in this way. In conclusion I should like to quote from the briefing note that has been provided to committee members by the committee secretariat. It states in part:

The very serious deliberations that proceeded the need for this amendment in the Crown Solicitors office, and with the Parliamentary Counsel as evidence from the report of the Regulation Review Committee would suggest to any observer that this amendment may have a significant impact on existing rights and obligations of people in the Harness Racing Industry.

For that reason I will support the Hon. Malcolm Jones when he seeks in Committee to have that part of the bill deleted. I hope I am not speaking too soon, but I understand that the Government has agreed to that. The Regulation Review Committee works extremely well. It is well chaired and works in a bipartisan manner. Almost all of its reports have been the result of unanimous recommendations. It will be good if the Committee deals with this matter in that way.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [10.00 p.m.]: I do not have great knowledge of this bill. It is very difficult to make decisions on bills that are amongst a lot of other bills late at night at the end of a session. Why is the board of the Art Gallery Trust being increased from nine trustees to 11 trustees? I spend days and sometimes nights counting members in this Chamber, and to me that seemed a highly significant change. I was not given a briefing on that vital point, except to be told that it would increase the experience on the board. Sometimes the number of people on boards are reduced by two to decrease its size, and there are other reasons why numbers are decreased. Will the Government tell me why it is better to have two more people on the Art Gallery Trust board?

**The Hon. IAN COHEN** [10.01 p.m.]: The Greens support the Statute Law (Miscellaneous Provisions) Bill which is essentially a tidy-up bill. A number of issues have been taken up by environment groups, and they



have received assurances that certain items have been taken out of the bill. These are significant improvements, and I commend the Government for listening to the concerns of the environment movement. In relation to the Fisheries Management Act, I understand that new section 221B enables the Director of New South Wales Fisheries to grant a licence authorising a person to take action that is likely to result in harm to a threatened species, population or ecological community, or damage to a habitat.

This proposed amendment may significantly increase the number of persons who may exercise rights under a licence. Environment groups are concerned that by increasing uncertainty as to who is authorised to exercise rights under a licence, it may also make enforcement against such a group more difficult. I understand that that has been resolved with the Minister's office. In relation to the Ombudsman Act, the amendment to section 15 to allow the Ombudsman to inform a complainant orally of a decision to refuse or discontinue an investigation may reduce the transparency of this process. However, environment groups are concerned that the knowledge of the possibility that details of complaints will be made to the authority concerned will inhibit people from complaining to the Ombudsman. I understand this has been dealt with by the Minister's office and environment groups.

The proposed amendment to the Statute Law (Miscellaneous Provisions) Act 2000 will delay the repeal of the School Forest Areas Act 1936 by two years to June 2003. If the amendment is not made the Act will be repealed imminently, on 30 June 2001, and environment groups are anxious for the repeal to be delayed. In relation to the Water Management Act, the amendment to section 60 will significantly affect the priority of environmental flows where severe water shortage orders under section 60 (2) are in place. Currently the Act provides that in these circumstances first priority is given to major utilities, local water utilities—regarding domestic water supplies—and the needs of persons exercising basic land-holder rights; the needs of the environment are given second priority; and the needs of irrigation corporations and private trusts are either third or fourth priority depending on the nature of the licence held.

The proposed amendment will mean that water required by irrigation corporations, private irrigation boards and private water trusts in relation to domestic water supplies will have a higher priority than the needs of the environment. The phrase "domestic water supplies" is not defined. I understand that that has also been resolved. Regarding the Land and Environment Court Act 1979, this section gives the court jurisdiction to hear civil enforcement provisions under various Acts. In relation to civil enforcement of breaches of the Native Vegetation Conservation Act, section 20 of the Land and Environment Court Act gives the court power to hear and dispose of proceedings under section 45 or 64 of the Native Vegetation Conservation Act 1997.

The briefing given to various members by Rachel Walmsley, the Environment Liaison Officer, is full and detailed. I am assured and confident that she and other peak environment groups have done an adequate job in liaising with the Government so that we have a bill that has assurances that keep the environment movement satisfied that it is moving some important issues in a positive direction and tidying up many of these Acts. I am pleased that the Greens can support this initiative by the Government.

**Reverend the Hon. FRED NILE** [10.06 p.m.]: The Christian Democratic Party supports the Statute Law (Miscellaneous Provisions) Bill. At least one such bill is passed each session to cover minor amendments to various Acts. I note that on page 6 the definition of "Aboriginal person" has been clarified. Governments sometimes do not accept amendments moved during debates but later make changes in this type of legislation. To my recollection there was a problem with the Aboriginal Land Council in regard to the meaning of "Aboriginal person", which had to be defined within the Aboriginal Land Rights Act 1983. This amendment to the definition will make it clear that an Aboriginal person means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal person, and
- (c) is accepted by the Aboriginal community as an Aboriginal person.

On an earlier occasion I moved an amendment to insert those words into the Fisheries Management Bill, but my amendment was not accepted. I am pleased that the Government will sometimes accept that matters which it did not believe were important are often important to those who are affected by them. This minor change is important in the view of Aboriginal leaders. In relation to the Ombudsman Act 1974, other speakers have referred to the provision that the Ombudsman may reply orally to a complainant. Obviously at some point that must be put onto the record. Individuals must be interviewed by the Ombudsman and must be told of the decision in person. One would think it would be simple for the complainant to be provided with the response of the Ombudsman in writing to avoid any confusion as to what has been decided. Subject to any amendments, we accept the bill in principle.

**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) [10.08 p.m.], in reply: In relation to a number of matters raised during debate, I advise the Chamber that after consultation with members of this House the Government decided to amend or remove certain provisions with the Statute Law (Miscellaneous Provisions) Bill. The removal of these items is in keeping with the nature of the Statute Law (Miscellaneous Provisions) Bill, which, as the Hon. Don Harwin said, is recognised as being a non-controversial process affecting minor policy and technical amendments

I shall foreshadow matters that the Government will move to have deleted from the bill in Committee. These include the proposal to amend section 221B of the Fisheries Management Act 1994 regarding authorisation of persons to undertake activities under a licence which may result in harm to a threatened species, and the proposal to amend section 15 of the Ombudsman Act 1974 relating to oral notification by the Ombudsman regarding decisions not to conciliate, investigate or continue to investigate a complaint. In relation to the proposal in the Water Management Act 2000 the Government seeks modification of item [5] of schedule 1.22 to focus the amendment on ensuring domestic water supplies are given priority in a time of water shortage, the removal of items [25], [26], [27], [37] and [38] of schedule 1.22 regarding proposed amendments to transfer to the Act the effect of a provision contained in the Water Management (Broken Hill Water Supply—General) Regulation 1997 and the removal of items [50], [51] and [55], of schedule 1.22, which would have allowed regulations to qualify the definitions of "aquifer interference activity", "controlled activity" and "waterfront land." Additional matters were raised by the Leader of the Opposition but I shall deal with those in Committee. I commend the bill.

**Motion agreed to.**

**Bill read a second time.**

#### **In Committee**

**Clauses 1 to 6 agreed to.**

#### **Schedule 1**

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

No. 1 Page 7, schedule 1.5 [6], lines 15-19. Omit all words on those lines.

**The Hon. MALCOLM JONES** [10.15 p.m.]: I move Outdoor Recreation Party amendment No. 1:

No. 1 Page 9, schedule 1.7, lines 1-12. Omit all words on those lines.

I will not reiterate the eloquent presentation of my colleague the Hon. Don Harwin. I suggest that with the deletion of schedule 1.7, the Government move a more substantive amendment to cover the problem that the deletion of schedule 1.7 creates. I commend the amendment.

**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) [10.16 p.m.]: The Government does not oppose the amendment.

**Amendment agreed to.**

**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) [10.17 p.m.], by leave: I move Government amendments Nos 2 to 11 and an additional Government amendment circulated on sheet C-105D in globo:

Page 16, schedule 1. Insert after line 11:

#### **1.12 Police Integrity Commission Act 1996 No 28**

##### **[1] Section 8 Assistant Commissioners**

Insert after section 8 (3):

##### **(4) Holder of judicial office**

Clause 6 of schedule 1 applies to an Assistant Commissioner employed as referred to in section 10 (2) in the same way as it applies to the Commissioner.

**[2] Schedule 1 Provisions relating to Commissioner**

Insert after clause 4 (2):

- (3) Despite subclause (2), the person holding the office of Commissioner immediately before the commencement of this subclause may hold the office of Commissioner for terms totalling no more than 6 years.

- No. 2 Page 11, schedule 1.10, lines 29-35. Omit all words on those lines.
- No. 3 Page 26, schedule 1.22 [5], line 34. Omit "wherever occurring". Insert instead "from section 60 (3) (a) (i)".
- No. 4 Page 29, schedule 1.22 [25], lines 9-12. Omit all words on those lines.
- No. 5 Page 29, schedule 1.22 [26], lines 13-16. Omit all words on those lines.
- No. 6 Page 29, schedule 1.22 [27], lines 17-20. Omit all words on those lines.
- No. 7 Page 30, schedule 1.22 [37], lines 19 and 20. Omit all words on those lines.
- No. 8 Page 30, schedule 1.22 [38], lines 21-24. Omit all words on those lines.
- No. 9 Page 31, schedule 1.22 [50], lines 25-29. Omit all words on those lines.
- No. 10 Page 32, schedule 1.22 [51], lines 1-5. Omit all words on those lines.
- No. 11 Page 32, schedule 1.22 [55], lines 13-15. Omit all words on those lines.

The Government proposes to amend the bill to insert a new schedule 1.12 to enable the current Commissioner of the Police Integrity Commission, Judge Urquhart, QC, to finalise the commission's Operation Malta investigation. Judge Urquhart's term of office as commissioner expires on 18 August 2001. Clause 4 (2) of schedule 1 to the Police Integrity Commission Act 1996 prevents his reappointment as commissioner as he would have served the maximum possible of five years in that office. The Leader of the Opposition earlier commented on the reasons for the extension of Judge Urquhart's term as Police Integrity Commissioner. The judge has indicated that the Operation Malta investigation, which concerns issues connected with the service's crime management support unit, is now unlikely to be completed by 18 August.

That is because on 25 June 2001 Commander Brammer, the former head of Special Crime and Internal Affairs with the Police Service, was required to obtain separate State-supported legal representation for his appearances before the commission. It is likely that the time taken for Commander Brammer's new counsel to be properly briefed will result in further Operation Malta hearings being deferred for a period of time, which may prevent Judge Urquhart from completing the investigation during his period of office.

Whilst ongoing Independent Commission Against Corruption investigations have previously been transferred to a new officer, and the term of office provisions of the Police Integrity Commission Act are identical to those of the Independent Commission Against Corruption Act 1988, it is clear that the near completed nature of the Operation Malta investigation and its obvious importance will mean the investigation will be adversely affected if Judge Urquhart is required to cease his role in this matter. The Government proposes two minor amendments to the Police Integrity Commission Act that will ensure the greatest possible flexibility in arranging for Judge Urquhart's continued hearing of the Operation Malta investigation, having regard to the needs of the Police Integrity Commission and Judge Urquhart himself.

Item [1] of new schedule 1.12 amends section 8 of the Police Integrity Commission Act to enable Judge Urquhart to be employed as an assistant commissioner, with the delegated role of finalising the Operation Malta investigation, whilst maintaining his tenure and entitlements as a judicial officer. Currently, clause 6 of schedule 1 to the Act only enables a judicial officer to maintain his or her tenure and entitlements if appointed as a commissioner. This provision will also allow future flexibility in employing judicial officers as assistant commissioners.

Item [2] of new schedule 1.12 enables the Governor to extend Judge Urquhart's term of office for a period of up to one year. This would not change the current five-year term requirements for future appointees to the position of commissioner, ensuring consistency is maintained with the similar term of appointment provisions of the Independent Commission Against Corruption Act 1988. These amendments are necessary to ensure a full and proper investigation into the matters raised in Operation Malta, and the Government encourages all members to support them.

**Amendments agreed to.**

**Schedule 1 as amended agreed to.**

**Title agreed to.**

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

## **WASTE AVOIDANCE AND RESOURCE RECOVERY BILL**

### **Second Reading**

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [10.23 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.**

This bill and the *Waste Recycling and Processing Bill 2001*, which will be introduced into the House at a later stage, represent the most extensive examination ever into waste management in New South Wales.

When the Carr Labor Government came to office in 1995, it did so determined to provide the community with sustainable solutions to the many environmental issues associated with waste and to offer a blueprint for action. The centrepiece of the Government's landmark reforms—the *Waste Minimisation and Management Act 1995*—was enacted little more than eight months after taking office.

Five years on, it is timely to consider what we set out to achieve and what needs to happen next. We need to keep developing solutions to the complex problems associated with waste.

The Government's goals remain clear. We want to see a continuous decline in waste generation. We want the recovery of resources from waste to be optimised. We want to manage, in the most environmentally responsible manner, the ever-shrinking waste left after recovering those resources. Our aspirations are a reflection of the community's feelings in regard to these matters.

Good progress has been made over the past five years against each of these goals. However, since the introduction of the Waste Act we have been able to examine emerging practices, both elsewhere in Australia and internationally. We can now see how to improve our approach so that outcomes are achieved more quickly and efficiently.

### **Consultation**

The Government has consulted widely and often in the process of developing these proposals.

- As part of Minister Debus' formal review of the Waste Act he called for public comment. 98 submissions were received; most groups with an interest in waste matters were represented in these submissions.
- Secondly, the Government undertook a review of the Waste Act as required by the National Competition Policy agreement. Again, this review included a public submission process.
- Thirdly, Minister Debus commissioned the *Independent Inquiry into Alternative Waste Technologies and Practices*. This Inquiry—an Australian first—was conducted by an expert panel comprising Tony Wright, Cathy Zoi and Dr Gary Smith, sought and received input from a wide range of interest groups, including industry and the environment movement.
- Finally, since taking responsibility for the environment portfolio in 1999, Minister Debus has personally consulted with many groups with interests in waste management. From this Minister Debus has developed a clear understanding of their views and the areas that would benefit from further reform.

### **The waste issue**

I think it is fair to say that the community as a whole has a very real concern about waste and its management. We live in a time when people's consumption patterns are changing. People are less and less sure about how to manage the impacts those patterns are having. We see tension between individuals' aspirations to deal better with waste and their day-to-day practice.

The main goal of waste policy now is very different than that of thirty years ago when the old *Waste Disposal Act* set up Waste Service's forerunner, the Waste Management Authority. Today, we do not take waste for granted, nor focus on disposal. Our job today is to support alternatives to the unsustainable use of materials, while ensuring that the treatment of residual wastes delivers the best environmental outcomes.

The Carr Government has been actively responding to these drivers by taking steps to transform waste management in New South Wales. Before our 1995 legislation, waste policy in New South Wales was concerned only with disposal. At that time, the laws mapped out a future for New South Wales that involved more and larger tips proliferating across the landscape. The 1995 Waste Act, for the first time, provided a coherent framework for action on waste minimisation and, again for the first time, applied to the whole state.

#### **The 1995 waste legislation**

Five years of effort have brought results. I would like to draw the attention of the House to some of these achievements. They provide the building blocks for the Government's current actions.

As I indicated, the process began with the Waste Act. The Act achieved several things:

- established a set of principles and goals in relation to waste management
- established a framework for clarifying the roles and responsibilities of state and local government, the manufacturing industry and the waste industry
- created a flexible and environmentally focussed system for waste regulation.

The essential features of the Waste Act were that it:

- established a bold 60 per cent waste reduction target
- created a means for gathering advice on state wide policies and priorities
- set up the first ever mechanism for regional waste planning and management
- ensured adequate resources for waste initiatives across the State, and
- created a statutory basis for industry waste reduction.

We introduced this reforming legislation little more than six months after taking office. This is in stark contrast to the five and a half years it took the Coalition to produce its somewhat ironically titled policy, *No time to Waste*. This is a policy that the Coalition did little to implement in the two years between its release and the 1995 election, despite the urgency suggested by the title. Little has been heard from the Coalition since, I am sad to say.

#### **Waste achievements**

Over the last five years, we ensured that the process of minimising waste became a reality, by:

- establishing the Community Waste Reduction Grants Scheme
- developing action plans for green waste and construction and demolition waste
- developing the three industry waste reduction plans—one each for the dairy, tyre, and beverage industries
- developing the first regional waste plans
- establishing mandatory waste recycling and purchasing plans and actions for New South Wales public sector agencies—an Australian first
- undertaking a three-year state-wide education program dealing with waste avoidance and green waste reduction.

We have made significant gains. Last year, compared with 1990 levels, we were disposing of about 25 per cent less waste for every dollar's worth of economic activity in this State.

I understand that industry studies suggest that New South Wales's diversion rate for recyclables is higher than the national average. We intend to improve on this trend.

In tandem with reducing wastes, we have overhauled the environmental management of residual wastes by:

- developing waste regulations and waste assessment guidelines
- developing guidelines for effective landfill management
- introducing a new scheme for tracking hazardous and industrial wastes
- participating in the development and implementation of the *National Environment Protection Measure for the Interstate Movement of Controlled Wastes*
- ensuring a proper disposal mechanism for non-hazardous industrial wastes
- introducing a new Act to expand New South Wales's anti-littering laws.

This is an impressive list of achievements in a relatively short span of time.

The *Independent Inquiry into Alternative Waste Management Technologies and Practices*—the Wright Inquiry—provided an excellent blueprint on how to secure even more sustainable waste management.

The report defines a new framework that calls for continued efforts to avoid waste and to see, where possible, better integrated systems to use wastes as resources in ways that maximise their value. Minister Debus has spoken elsewhere on numerous occasions about the very broad support this Inquiry's recommendations have received since it was released in June last year.

#### **Next stage of reforms**

Madam President, we are now at the stage to launch the next phase of the Carr Government's waste reforms.

The package of reforms in my review picks up on the essential findings of the Wright Inquiry. This includes:

- a strong focus on avoiding waste
- further cleaner production initiatives
- improved data on resource recovery
- better ways to assess waste technology
- more integrated collection systems for important materials such as office paper, cardboard, organics and wood
- improved recycling in public areas, and
- a waste levy that provides a strong economic incentive to reduce waste disposal.

#### **Where to from here**

In essence, the reforms in Minister Debus' report, and reflected in the current bill before the House, seek to ensure that:

- the organisations that play roles in waste issues are properly structured and equipped to make an effective contribution to waste reduction and resource conservation
- the best tools are available for delivering reductions in key waste areas and from industry sectors
- we provide industry with every incentive to invest in modern, clean technologies for dealing with recovered waste
- we regulate the waste industry to ensure the best environmental outcomes at lower cost to the industry and to the community of New South Wales.

These reforms are also about getting better value for the public's money. Through its agreement to direct 55 per cent of waste levies to the Waste Fund, the Government is providing over \$40 million per year for waste programs. These reforms will create a much more efficient system, freeing up several million dollars per year for innovative waste and resource management programs.

Waste is a complex issue and its effective management requires a sophisticated approach. Comments from stakeholders in the 98 submissions to the review of the Waste Act, and subsequent consultation, suggest that the proposals outlined in this report will ensure that we continue to build such an approach in New South Wales.

#### **The Bill**

I now wish to take Members through the bill, point to the highlights, and to explain the Government's thinking behind them.

#### **Resource New South Wales**

The Bill replaces regional waste boards with a single state agency, Resource New South Wales, to provide and support state-wide, regional and local waste programs. It replaces the State Waste Advisory Council with the independently chaired Resource NSW Board.

*Resource New South Wales'* role in relation to waste is intended to be similar to that of the Sustainable Energy Development Authority (SEDA) on energy issues.

Five years ago, consensus was that regional waste planning and management provided a good organising principle for our waste problems. It was a view put forward by the Opposition in its *No time to Waste* policy. It was a view echoed in the Government's waste policy proposals. In debating the 1995 Waste Bill, the then shadow environmental spokesperson noted her support for regional approaches.

Most interested parties agree that the Government's regional waste board model was a reasonable starting point and that the nine boards, individually and collectively, have embarked on some useful initiatives. Equally, there are many concerns that this effort has not been as co-ordinated as originally desired.

A range of factors is adversely affecting the boards' operations:

- Effective frameworks for collaboration and co-operation across regions have not been developed.
- A clear message coming from those involved in waste management is that the boards do not uniformly possess sufficient expertise in the full range of required areas.

- The powers, functions and responsibilities of waste boards are too open to interpretation. Role confusion is one major factor affecting success.
- Many have claimed that the boards have not been cost-effective and that there is much program duplication.
- Others considered that, as local government determines board directorships, the boards are not sufficiently representative of industry and the community.
- Finally, the Auditor-General also expressed concern about aspects of the existing system.

Underlying these issues is a significant structural anomaly. The boards are state government entities, but their membership is limited to local council nominees. Accountabilities are confused. In summary, these factors combine to create a situation where the necessary leadership cannot be provided by the boards.

The State Waste Advisory Council has struggled to provide leadership in terms of guidance, strategy or quality advice. Concern about the Council's performance has been widely expressed. A deliberative forum on a matter as complex as waste is considered important. However, it is clear that the majority of those groups interested in waste do not want the Council to continue in its current form.

Two central factors have contributed to this situation.

- First, the current arrangement where the Council does not have an independent chair has had little legitimacy with environmental or local government groups.
- Secondly, the Council is structured as a representative forum rather than an expert body. It is therefore not set up to deal adequately with the full range of waste issues.

The new institutional arrangements will provide clarity about roles. The new agency will be focused on a strategy for waste reduction and the delivery of programs to implement it. The EPA will continue its role in policy and regulation on waste. A corporatised Waste Service will be a publicly owned leader in the provision of waste and resource recovery services.

*Resource NSW* will be a statutory authority subject to the control and direction of the Minister for the Environment. Its head office will be based in Western Sydney, with regional offices in Newcastle and Wollongong. In recognition of the need to better cater for rural communities, a small number of staff will also be housed in government offices in other regional centres. It will be funded through allocations from the Waste Fund.

*Resource New South Wales'* functions are proposed as follows:

to develop, co-ordinate and evaluate the implementation of strategies and programs for the state-wide achievement of government policy objectives in:

- resource conservation and waste reduction, including municipal, commercial and industrial, and construction and demolition waste
- resource conservation and waste reduction and management in relation to identified regions, industry sectors or material types
- market development for recovered resources and recycled materials
- community education and awareness in relation to resource efficiency and waste reduction and management
- programs for preventing and controlling litter and illegal dumping
- information dissemination.

Further tasks are:

- to assist local communities to reuse resources rather than throwing them away.
- to assist in developing co-ordinated waste management services, including system and contract reform, such as integrated contracts for waste and recycling services and system co-ordination
- to research and develop waste reduction and resource conservation infrastructure, technologies and systems and provide financial assistance for such endeavours
- to develop and support programs to train and educate those involved in resource conservation, waste management and litter control
- to monitor, report on and evaluate the regional implementation of state wide policies and strategies.

The *Resource NSW Board* will replace the State Waste Advisory Council. The board will comprise ten people including an independent chair, *Resource NSW's* chief executive and experts from the following areas:

- resource conservation and environmental protection
- community interests

- local government
- waste management industry
- industry
- rural and regional interests
- financial and risk management
- urban planning and infrastructure.

The Minister for the Environment will invite a range of groups to nominate board members.

The board will advise *Resource NSW* on the preparation and implementation of its plans, programs and activities.

The functions of *Resource NSW* and its board complement the EPA's roles in providing environmental regulation and policy advice.

#### **Priority activities for *Resource New South Wales***

##### **Continuation of Waste Board Programs**

The Government will recoup its investment in the waste boards by transferring important and successful programs to *Resource NSW*. It will also expedite actions arising from the *Independent Inquiry into Alternative Waste Technologies and Practices*.

One of the notable successes of the Western Sydney Waste Board, in co-operation with councils and the EPA, has been the Regional Illegal Dumping Squad. *Resource NSW* will be required, as a priority, to extend this initiative to the rest of Sydney, the Central Coast, the Hunter and the Illawarra. Other Board programs that will continue include:

- Waste Not Development Control Plans
- Waste Makes No Cents alliance program
- Waste Wise public place and special events program
- Local Government Waste Reduction and Purchasing Policy, and
- The Household Hazardous Waste Collection Strategy

##### **Rural and Regional Initiatives**

As noted, *Resource NSW* will have state-wide responsibilities, with regional offices in Wollongong and Newcastle. Staff will also be located in country centres. As well as its broader functions affecting rural areas, *Resource NSW* will devote considerable resources towards facilitating better recycling and waste management in regional and rural areas. The Board of *Resource NSW* will include an expert in rural interests.

Rural groups will continue to be supported to deliver regional programs. In line with the current arrangements, rural and regional groups will be able to tailor their waste reduction initiatives according to specific area needs. The outcome will be better waste management and services in rural NSW, with better protection of the environment.

An early priority for *Resource NSW* will be to determine the funding support required to continue existing rural initiatives and to develop new ones. *Resource NSW* will appoint a rural waste programs co-ordinator to undertake these tasks.

I should also inform the House that the Government will commit unprecedented funding to rural and regional areas. Waste and resource management needs do not stop at the end of a particular geographic boundary.

Through our consultations with rural and regional groups, we have come to realise that some of the most successful waste reduction programs have been set up by formal and informal groupings of councils. I know, for instance, that the Netwaste group of councils is held in very high regard.

##### **Direct Funding for Councils**

The new agency will also need to determine priorities for supporting local council programs throughout New South Wales. Once funding criteria are developed, direct support will be given to councils for:

- waste service improvements, including contract reform
- waste education
- improved public place recycling, and
- cleaner production partnerships with small and medium-sized businesses.

*Resource NSW* will take over as quickly as is practicable. A start-up date of 1 October 2001 is contemplated. The legislation sets out arrangements for the transfer of Waste Board staff who may join the new organisation. In making the transition to the new agency, the Minister for the Environment has put in place arrangements to minimise disruption to current board staff and programs.



### Industry waste reduction

The Government has had a two-part approach to industry's waste. First, the Government has strongly advocated cleaner production both through regulatory and educative actions. We have run a successful partnership program with small and medium industries, for example, smash repairers, spray painters, printers and small foundries. This program has brought both environmental and financial improvements and enjoys strong industry support. A total of \$5.5 million will be made available to the EPA to expand our successful cleaner production partnership program to encourage greater waste avoidance in these sectors.

The second approach has been through negotiated industry waste reduction plans. The planning process has not been entirely successful. Industry admits it has not achieved all its targets in the dairy plan and three years in, the tyre plan shows little sign of reaching its targets. The beer and soft drink plan runs to 2003 but progress to date in achieving its targets and commitments has been much slower than anticipated.

The major problems with the current planning approach are that:

- it does not provide a transparent process for determining the circumstances in which mandatory approaches may be considered
- it does not provide comfort to industries that are doing the right thing that they will not be captured under a mandatory approach
- it thwarts government action where industry is not meeting plan commitments.

Taken together, these problems have resulted in a plan process that cannot readily meet its original objectives. The bill therefore replaces the current industry waste reduction plans with new arrangements that take up successful international experience with **Extended Producer Responsibility**.

The guiding principle is that the Government will not intervene where industries are doing the right thing to reduce problem wastes, but can act decisively where they are not. The Government will only act if specified criteria in the bill are satisfied. This allows industry to undertake self-initiated, flexible and cost effective approaches - unfettered by government regulation.

On the other hand, it assures those who want action by industry, that the Government has the necessary power to act decisively where industry is dragging the chain.

The emphasis should be on managing problem wastes, for example, large volumes, high toxicity, or where there is a clearly established environmental benefit from greater recovery of material in a particular waste stream. The scheme must include more transparent decision-making.

I am advised that successful schemes adopting the concepts of *product stewardship* and *extended producer responsibility* operate extensively in the United States, Japan, Canada and Western Europe.

Therefore, the specific new arrangements for industry waste reduction in the bill are:

- to define extended producer responsibility and product stewardship
- to set out the heads of consideration for the circumstances in which the Minister may introduce mandatory schemes
- to modify the existing regulation-making powers as mechanisms to require such extended producer responsibility scheme, where an industries are not delivering.

The bill sets clear parameters for the introduction of a mandatory scheme. They are:

- whether the product category or substance poses problems in terms of either volume or toxicity
- whether there is a national scheme in place that adequately addresses the issue
- whether there is an effective voluntary initiative in place that can achieve the desired outcomes
- whether there is evidence of clear environmental benefit from recovering the resource
- whether analysis shows positive economic benefits arising from the proposed mandatory scheme, and
- whether legal impediments stop the State acting unilaterally

These considerations will determine if a mandatory approach is required for a substance, product, group of products, or an industry. The bill provides for regulations to bring about this mandatory process. There will also be provision for regulations to implement nationally agreed schemes for extended producer responsibility and product stewardship.

The requirements of the *Subordinate Legislation Act* also ensure that a rigorous analysis of impacts will occur before mandating a scheme for producer responsibility. They also, of course, provide the Parliament with an opportunity to review any scheme proposed in Regulation.

To help industry plan for schemes in their sector, the new legislation will require the EPA to publish, from time-to-time, a statement of priorities for industry waste reduction. The EPA and *Resource NSW* will jointly prepare this statement, in consultation with interest groups.

Replacement of the existing provisions for industry waste reduction with the new scheme will have an impact on existing industry waste reduction plans. The dairy plan is completed. Industry's efforts associated with the Beer and Soft Drink Plan have been useful in what they have been able to achieve, though it is behind against its targets. The plan now forms part of the industry's action plan under the National Packaging Covenant.

The bill continues the plan that gives effect to the *National Environment Protection Measure on Used Packaging Materials* until that measure expires.

The Used Tyre Plan will cease to have legal force. The EPA has advised me that this plan has not gone well. Processes are under way for a possible national approach on used tyres. The Minister for the Environment has asked the EPA to meet with the Tyre Council as a matter of priority to resolve any issues that arise from either the Commonwealth's actions or the repeal of these provisions.

### **Objects of Act**

The new institutional and industry waste arrangements form the major elements of the bill. I now want to point Members of the House to the bill's objects. These are particularly important in this instance because, while assisting in explaining the purpose of the bill, they also reflect the very important principles that the Government is pursuing.

Waste avoidance remains at the heart of the Government's policy. We are currently seeing a shift away from the notion of waste—with its associated disposal problems—towards that of "resource recovery". The idea of recovery picks up reprocessing, reuse and recycling. The name of the bill picks up both the concepts of avoidance and recovery. The objects of the Act support these ideas.

### **Target**

The Government came to office with a promise to mandate a waste reduction target. The objects of the 1995 Waste Act set a 60 per cent reduction in waste disposal by 2000, when compared to a 1990 baseline, measured in kilograms per person.

The single numerical target has become increasingly problematic for the following reasons:

- Available waste data was inaccurate
- New classifications mean that some things are counted as waste now—like cleanfill—which were not included in the baseline measurement
- The target cannot take account of fluctuating economic activity, which is the single largest factor in disposal rates.
- It used a performance measure that is now widely discredited
- It cannot provide useful information on reductions in individual wastes.

Section 91 of Waste Act requires that the Minister for the Environment consider new targets after 2000. I have undertaken this and I propose a new approach. Rather than a numerical target, the objects of the bill include goals:

- to encourage the most efficient use of resources
- to provide for the continual reduction in waste generation
- minimise the consumption of natural materials and the final disposal of waste.

Non-statutory targets and indicators will support these goals. These targets and indicators will be reviewed regularly in the light of emerging influences - for example, changing levels of economic activity - and priority materials. They will only be set for wastes when there is good, useable data, so that progress can be measured in a meaningful way and reliable reports can be prepared. An expert committee reporting to the *Resource NSW Board* will advise on proposed targets.

These arrangements will give the community confidence in reported results, and provide a solid foundation for the development of appropriate waste reduction policies and initiatives.

### **Waste Hierarchy**

The waste hierarchy in the objects of the 1995 legislation encourages the community to avoid waste as the highest priority. If waste cannot be avoided, it should be re-used or recycled. Only as a last resort should waste be landfilled. This hierarchy acts as a highly visible, simple, shorthand depiction of waste goals. It encourages waste reduction and higher order reuse of materials, rather than "end-of-pipe" disposal. Industry and the community broadly recognise and generally accept its value. Government finds it a useful tool for considering proposed waste initiatives.

The hierarchy's weakness is that it is a rigid and linear tool for judging waste management options. Its inflexibility makes no allowance for individual circumstances; for example, by implying that reuse is always preferable to recycling. Such inflexibility discourages proper assessment of all the environmental and financial benefits and costs, and is inconsistent with ecologically sustainable development.

To improve the call to action that the hierarchy provides, the objects of the bill introduce the concept of *efficient use of recovered resources*, along with the principles of *improved environmental outcomes* and *ecologically sustainable development*. The modified hierarchy overcomes the inflexibility of the current model by broadening the second category to include new and

emerging technologies. The order becomes avoidance as first priority, *resource recovery* is the second priority and disposal last. *Resource recovery* captures waste reuse, reprocessing, recycling and energy recovery but does not set priorities among them. Priority will depend on other analytical tools, including cost-benefit and life cycle analyses.

### Waste Fund

The bill retains the provisions of the Waste Planning and Management Fund but upgrades them to take account of changed institutional arrangements. The fund will be able to allocate its resources to state-wide environmental regulation and enforcement efforts related to waste.

### Supervisory licences

The bill repeals section 87 (5) of the *Protection of the Environment Operations Act 1997* as it restricts competition. This section requires a public authority that holds an EPA licence to supervise operators of putrescible landfills, to set the operators' disposal fees.

The rest of section 87 remains. Public authority control of putrescible landfills ensures that they operate in accordance with New South Wales environmental policies and enjoy a high degree of public confidence. This is the overriding concern for at least the medium future. Some concern has been expressed, however, that the amended section 87 may be considered anti-competitive. Clause 6 of schedule 2 of the bill therefore protects section 87 of the Act from part IV of the Commonwealth's *Trade Practices Act 1974* and the New South Wales Competition Code. The bill provides such protection until 1 July 2003.

### Other POEO Act changes

Two changes in the bill will assist in the improved environmental regulation of waste and in the administration of the waste levy.

- First, the bill extends the existing regulation-making power under the POEO Act to regulate and prohibit the treatment and disposal of waste when required. This provides the community with the assurance that hazardous or highly toxic wastes will be treated safely.
- Secondly, the bill also amends the Act to allow the EPA to waive payment of the waste levy in limited circumstances.

### Conclusion

I have set out before the House the detail of the bill and the logic behind it. If members wish to gain a fuller appreciation of the reforms, I recommend they read the Minister for the Environment's report to Parliament to see the full package of reforms that support the bill.

In conclusion, I would remind the House that it was the Carr Labor Government's 1995 waste reforms that put New South Wales at the forefront of waste reduction and management. The Minister for the Environment is determined to build on our successes. With the passage of this bill, we have the potential:

- to further drive waste avoidance;
- to treat waste wherever possible as a resource; and
- to ensure that we have all necessary environmental protection tools available.

I commend the bill to the House.

**The Hon. JOHN RYAN** [10.23 p.m.]: The shadow Minister for the Environment gave a quite detailed analysis of this bill in another place. I see no reason to repeat many of the points that she made. I could perhaps summarise the Opposition's views on the bill by noting that when the Act to be amended by this bill was being debated in 1995 I recall honourable members spending a fair deal of time in this Chamber discussing it at length. One of the points that the Opposition made on that occasion was that the Government was being more than optimistic in setting for itself a 60 per cent reduction in waste. Since that occasion "waste" has been redefined in a number of different ways to ensure that the Government has been seen to have somehow or other paid attention to that particular target.

I note that the new version of the 60 per cent waste avoidance target is outlined in the second reading speech which the Minister had incorporated in *Hansard*. The Government boasts that last year, compared with 1990 levels, we disposed of about 25 per cent less waste for every dollar's worth of economic activity in the State. So that now we measure the waste disposal in terms of the dollars of economic activity. That is terrific, of course, when there is a large amount of economic activity in the State; that will make the figures look really good. But, if the level of economic activity declines for some reason or other, although the level of waste is unlikely to change dramatically we will have bad figures. That goes to show that you can tell lies and damned lies with statistics. The Government has persisted in telling lies and damned lies with regard to its achievements, or otherwise, in reference to the 60 per cent waste reduction target.

I recall the Opposition at the time of that debate suggesting that some of the bodies being established by that bill would waste large amounts of money. The Opposition in fact drew the attention of the Government

and of the media to the large amounts of money that are wasted by many regional organisations responsible for waste. They appear, by and large, to have been an opportunity for the Government to reward its loyal supporters in local government with a board appointment, and local government with some perceived additional authority. I see that the Government has now decided that the regional waste boards and the State Waste Advisory Council were experiments that it no longer wishes to continue. The bill before the House shuts down that bureaucracy. That is an admission of failure by the Government in what it had sought to achieve some years ago.

Some years ago the Opposition argued at length in this Chamber about waste reduction programs that might have been imposed, forced and cajoled on industry. Now the Government appears to be convinced that it is better to get industry on side and working with the Government, rather than to have the Government dictating to industry. The amendments before the House are a step in that direction. So the Opposition at least commends that approach. The excitement of the bill will be directed at the amendments. I understand that a great deal of arm twisting and horse-trading has gone on behind the scenes, and most of the amendments about to be discussed in Committee are likely to meet with a reasonable level of acceptance on all sides. As it seems the bulk of the debate on the bill will occur in Committee, it is probably best that I keep my remarks short and that I refer honourable members to the speech given by the shadow Minister for the Environment in another place as a more detailed explanation of the Opposition's view on the bill.

**The Hon. IAN COHEN** [10.28 p.m.]: The Greens have serious reservations about the Waste Avoidance and Resource Recovery Bill. We cannot support the bill without substantial amendments. Even with the inclusion of the amendments proposed by the Greens and the Hon. Richard Jones, this bill will fall far short of the legislation that is required to bring about solutions to the waste crisis. Waste management in New South Wales has a long and turbulent history. In the early nineties the Government set up an inquiry, through a joint select committee, to try to decide the best institutional arrangements for waste in New South Wales. It is worth remembering that this issue was an important issue during the 1995 election campaign, when the Australian Labor Party promised to introduce comprehensive waste avoidance measures. It is interesting to reflect on the 1995 election policy entitled "Labor's Waste Minimisation Resource Recovery Bill". It stated:

Labor will overhaul the 23 year old legislation governing waste management in NSW. A bold new strategy must be implemented to reduce the State's reliance on landfill dumps as we enter the 21st century.

Labor's Waste Minimisation Resources Recovery Bill will:

enshrine waste reduction targets into law. Labor believes a goal of reducing waste going to landfill by 60 percent by the end of the decade is achievable based on international experience.

compel industry and Government to adopt comprehensive Waste reduction plans to be monitored and enforced by the Environmental Protection Authority. These waste reduction plans will be attached to pollution licences issued by the E.P.A. Non-compliance will attract the same penalties as a breach of licence. The plan will be applied to both private companies and public authorities to ensure a level playing field exists.

require industry to take financial responsibility for its waste.

A Carr Labor Government will adopt Container Deposit Legislation only if industry fails to meet EPA-specified reduction targets within three years.

That Australian Labor Party election material was released in 1995. The enactment of the Waste Minimisation and Management Act 1995 addressed many of the recommendations of the joint select committee. The Act gave the Greens cause for optimism. The Greens were pleased to support the Government and we were particularly pleased to see the waste hierarchy enshrined in legislation. That hierarchy is fundamental at all levels. We all know the saying: An ounce of prevention is worth a pound of cure. Waste avoidance is ultimately prevention. We were also pleased to see that the Waste Minimisation and Management Act finally took on industry and the multinationals whose return to shareholders depended on the creation of megatons—or mega tips—of waste. The Act told these players, "It's time to dig into your pockets and put something back."

The industry waste reduction plans under the Act were a genuine attempt to require industry to develop some extended producer responsibility. There have been many criticisms of the 1995 Act, but some of the measures it introduced have been successful in raising community awareness of waste issues. Regional waste boards, in particular, have carried out some worthwhile community education projects. One of the major concerns of the Greens is that the regional waste boards will be abolished under this legislation and will not be replaced by another organisation at a local level. This will place board employees in limbo. Jo Eyes, from Wyong Creek, New South Wales, has written to me, saying:

As a board member of the Central Coast Waste Board I would like to alert you to an alarming precedent which is being set in this Bill.

On page 27 Point 4 ... General Managers and other declared officers of waste boards ... jobs have been dissolved. Their employment contracts and entitlements have been dissolved too. (3) (a) and (b) are, as I understand it, legislation which circumvents existing employment contracts for the General Managers and an unspecified number of staff. (This could be all or any of the staff.)

... this appears to be a denial of natural justice and makes employment contracts not worth the paper they are written on.

I would appreciate it if you could argue against this part of the Bill, as it is very unfair for the decent hardworking General Manager and staff, which this will discriminate against. This legislation will have an adverse impact on these people but will also create a very dangerous precedent. What worth or security can any Government employee have if they have entered into a contract with a Government department?

That letter is dated 26 June this year. Six years down the track, we are disappointed and frustrated with the extent to which the Act has been corrupted by industry's ability to pull political strings. The unwillingness of the State bureaucracy, particularly the Environment Protection Authority [EPA], to administer the Act and provide the Minister with accurate advice has been another source of continued frustration. One of the main promises of the Government was its commitment to introduce container deposit legislation [CDL] if the 60 per cent waste reduction target failed. It is a sad indictment on the Government that, despite the failure to reach this target, there is still no prospect of CDL on the horizon. The Government has once again caved in to the powerful industry interests that have resisted CDL at every turn.

The CDL inquiry is a good example. We were heartened to hear the Minister announce an independent inquiry into CDL late last year. The environment movement was happy to participate in the inquiry in good faith. I understand that the original waste minimisation Act called for such an inquiry. Why has the report not been released in time to feed into this process of legislative review? It would be a timely development if that report were tabled as part of this debate. It is several months since the Institute for Sustainable Futures provided its first draft of the inquiry report to the Minister. Why is it necessary for an independent inquiry report to be sent back time and time again to be rewritten? Was it just an exercise to buy time? The reasons for introducing CDL were clearly set out by the Local Government and Shires Associations in its submission to the CDL inquiry, which states:

Councils throughout NSW have long called for the introduction of Container Deposit Legislation (CDL). Generally, Shires councils have called for CDL to address the problem of roadside litter, while Local Government councils support its introduction to reduce the financial burden of operating kerbside collection (waste and recycling) services.

Motions for both the Local Government Association's and Shires Association's Annual Conferences supporting the introduction of CDL go back many years ...

A major concern for Shires Association councils is the unending stream of roadside litter, which most prominently consists of beverage containers. In the absence of a refundable-deposit on such containers the actions of few become the bane of many. Anecdotal and statistical evidence from South Australia supports what most would logically conclude, that a refundable-deposit on beverage containers greatly reduces their incidence as a litter item ...

Over the past decade, local councils have been coerced, particularly by the beverage and packaging industries, into providing more and more kerbside collection services. These industries have gone to great lengths to ensure collection, by councils, of their (supposedly) recyclable material. Initially there was little or no net cost associated with such collection services as the price received for the material collected tended to off-set collection costs—largely because industry subsidised the payback price during the establishment of kerbside collection services. This created an artificially favourable market situation and attracted councils to enter what was ultimately to become an unsustainable market. Once these collection services were established ratepayers 'depended' upon them as a means to satisfy their desire to 'protect the environment'. Industry then quickly withdrew the financial support it initially provided.

From a Local Government perspective, the need for CDL is urgent. Local Government Association councils look to CDL to provide an alternative to the financially unsustainable kerbside collection services they are now 'expected' to operate, while Shire Association councils look to CDL to provide a solution to unsightly roadside litter.

Growing opposition to waste disposal, whether landfill or incineration, means that disposal facilities are perceived by the community as a threat to the local amenity and the environment. As a result, local councils no longer enjoy the luxury of being able to regard disposal as a low-cost, community-acceptable, non-controversial activity. In response to these changing community attitudes to waste and the physical constraints on continued disposal, governments around the world are now pursuing dramatic reductions in the amount of waste being generated.

Part of these changes is the recognition that industry needs to take full life-cycle responsibility, both physical and financial, for the products and packaging it creates. In so doing it is hoped that new production

methods and consumption patterns that have less of an impact on the environment will evolve. In this context, CDL has the potential to contribute significantly to waste reduction not only in terms of its potential to reduce directly the total amount of waste being generated for disposal but also in other ways that have broader environmental, economic and social benefits to the community. These include: less litter causing visual pollution, physical problems and requiring collection; less material blocking drains, filling gross pollution traps and requiring removal; less voluminous packaging material in public waste and recycling bins requiring frequent emptying; less low/no/negative value packaging material in kerbside waste and recycling collection streams placing a financial burden on councils and their ratepayers; and less litter, which avoids collection and pollutes the natural environment, both land and water.

Contrary to the assertion by the beverage industry that its containers make up only a small proportion of the total waste stream, local government's experience is that the contribution is significant in terms of volume, weight and longevity due to non-biodegradability. An indication of the significant volume of containers in the waste stream as well as their high value-to-weight ratio is provided by figures—although now somewhat dated—from a comprehensive survey of waste disposal at Lucas Heights landfill. The survey, conducted by BHP, shows packaging at 23.4 per cent by weight and 43 per cent by volume; containers at 11.5 per cent by weight and 18.2 per cent by volume; and plastic bottles at 3.1 per cent by weight and 10.3 per cent by volume. Councils throughout the State recognise the potential of CDL to contribute to litter reduction. Anecdotal as well as statistical reports highlight the fact that South Australia's CDL effectively removes deposit-bearing beverage containers from the litter stream. It is a common observation that beverage containers do not constitute the roadside litter problem that they are in other States. Such observations are supported by litter survey results that indicate that beverage containers are significant contributors to the litter stream, especially when analysed by volume.

Studies comparing litter in New South Wales and South Australia invariably showed that beverage container litter was less in South Australia, where the deposit system provides a financial incentive for consumers to return, rather than litter, such containers. As a basic principle, infrastructure needs will be minimised if CDL takes advantage of existing infrastructure and facilities, including retail outlets, shopping centres and backloading of vehicles. Alternative collection systems and infrastructure could be provided by local councils and other suitably located and capable organisations, if it is financially attractive for them to do so.

Local government has demonstrated an interest in providing resource recovery services over the years, but it can no longer afford to subsidise the beverage and packaging industries in the way in which it has had to through the costly collection of their packaging material via the kerbside. Point-of-sale return and subsequent return to the manufacturer will provide an efficient means of returning containers to their originators, who are best placed to reuse or recycle them. Transportation requirements will be minimised by the ability to backload. Competing alternative collection schemes will ensure the highest possible rate of return by enabling consumers to choose the most convenient return mechanism.

Utilising point-of-sale return as the most efficient means of returning containers to their originator will ensure that infrastructure costs are kept to a minimum. Point-of-sale return could well be complemented by the option of councils, community groups and businesses operating collection depots or services on a financially viable basis. The substantial pool of funds resulting from unclaimed deposits could fund such collection schemes and infrastructure in a way that no longer relies on collection being subsidised by ratepayers. The net financial impact on the beverage industry will be minimal, if any. The CDL system is, by definition, cost neutral. There is no net increase in the cost of a beverage.

CDL provides a level playing field for the beverage industry, in that all containers are equally attractive to the consumer by virtue of the refund that applies to them. There might be some minor costs associated with amendments to labelling to reflect the deposit or refund that applies to containers. It must be remembered that the beverage industry has been heavily subsidised by local government and ratepayers over a long period, especially in recent years, when its value has been of the order of \$100 million nationally per annum. A significant benefit has been derived by industry through CDL's non-introduction to date. The net cost to the community as a result of introducing CDL may well be zero, whereas the net cost to the community at present for kerbside collection is substantial.

Why should the community, through local government, pay to subsidise the beverage and packaging industries, enabling them to continue making record profits and to contribute to the environmental degradation that impacts so detrimentally on the community? It is clear that there is no logic to the current approach. Local government and the community can no longer afford to naively subsidise the collection of beverage packaging

via the kerbside. It is also clear that the community supports the introduction of CDL. Attitudinal survey results from South Australia, as well as one conducted by the Local Government and Shire Associations [LGSA] in New South Wales, confirm this.

It is regularly claimed, mainly by industry representatives, that CDL will destroy kerbside collection by making it financially unviable. Nothing could be further from the truth. It is time to put this long-standing, completely unfounded assertion by industry to rest. The kerbside collection of packaging material has long been financially unviable. Correspondence dated 5 April 1995 from Local Government Association President, Councillor Peter Woods, to the then Federal Minister for the Environment, Senator John Faulkner, set the record straight as follows:

I should stress that kerbside recycling schemes are not economically viable. Local Government does not make a profit on kerbside collection schemes. It is hard to see how kerbside recycling can presently be seen as being "economically viable". It merely relieves the packaging industry of the responsibility for its products. It would surely be preferable if there was no need for kerbside collection and products were returned to the point of sale for collection and appropriate treatment by the manufacturers.

The preferred model for implementation of CDL in New South Wales is one in which point-of-sale return is complemented by alternative collection schemes. Councils and other operators can participate in those schemes on the basis that it is financially attractive for them to do so. In regard to the range of containers to which CDL could apply, CDL should not be limited to just beverage containers. South Australia, for example, has taken steps recently to expand its CDL scheme. A great range of other container types would be appropriately dealt with via a legislated deposit-refund system. For example, the success of the drum muster scheme, which recently began operating in rural New South Wales to recover empty agricultural and veterinary chemical containers, would be greatly boosted by a refundable deposit applying to such containers.

Under the preferred model that I outlined earlier, it is appropriate that retailers and supermarkets have an opportunity to become collection depots. CDL could provide a climate in which retailers and retail complexes are enthusiastic about the operation of depots and are willing recipients of returned containers—due to financial incentives—and in which there is a potential for enhanced environmental image in the marketplace and an opportunity for return custom. Council facilities, where available and financially attractive to do so, could be used as collection depots for storage purposes and/or drop-off centres, provided necessary approvals and community acceptance of such facilities are forthcoming.

Existing waste and recycling facilities could serve as a safety net for the collection of those deposit-bearing containers that would otherwise be lost from the system. Business and community organisations are also likely to have an interest in participating in the collection process if, as is likely, there is some financial gain associated with doing so. A range of collection depot options, including retailers, councils and other organisations, is therefore desirable. CDL is an ideal instrument to use to introduce the principle of broader producer responsibility measures. Specifically, under a CDL system, manufacturers are responsible for ensuring that their containers are appropriately labelled, and that collection facilities exist within the reach of consumers, and they must have responsibility for the container right through its life cycle.

We now have before us the hastily prepared Waste Avoidance and Resource Recovery Bill. The best thing about this bill is its title, which is quite misleading. This is not really a bill about waste avoidance. It is an old-fashioned waste management bill which has been dressed up to look like a modern bill. It pays lip service to terms such as "resource recovery" and "extended producer responsibility". Apart from in the title of the bill the words "waste avoidance" are hardly mentioned at all. I am tempted to move an amendment to call it the "Issues Avoidance and Waste Maximisation Bill."

This bill is disappointing in a number of ways. First, it relegates the waste hierarchy—avoid, reduce, recycle and reuse—into the too hard basket. I will move an amendment to rectify that and to restore the hierarchy contained in the 1995 Act. The bill negates the industry waste reduction plans for the dairy, beer, soft drink and tyre industries. Those plans all failed through a lack of industry commitment and a lack of government will to enforce the clear sanctions and punitive measures available under the Act in these circumstances. The plans were not onerous and contained reasonable waste reduction targets which were achievable by industry.

Instead of retaining these plans and creating a better process for their enforcement, this bill sets up a new body—Resource New South Wales—from the ashes of nine waste boards. This central co-ordination body is a welcome move in some respects. It will overcome the duplication of separate waste board management structures. However, the bill does not clearly spell out what the relationships will be between Resource New South Wales, the Environment Protection Authority [EPA], the Minister and the Waste Corporation. This vaguely defined legislative framework is likely to result in a policy vacuum.

In these circumstances it is likely that the EPA will become the de facto waste policy setting body for New South Wales. That sends a shiver down the spines of several people in the environment movement, local government and even industry. Added to that, the bill gives the EPA virtually unfettered control over the Waste Fund purse strings—some \$47 million per year. Through this action the EPA has been less than vociferous about many issues and in some respects it has been rather gutless. It is a worry if it is to be left in control.

The major deficiency in the bill is the lack of commitment to the implementation of extended producer responsibility [EPR]. The Swedish system contains recycling requirements, not targets, for each category of waste. Producers are required to organise a collection system that facilitates the separation of packaging waste. I refer to advice that I received from the Total Environment Centre concerning the review of the Waste Minimisation and Management Act 1995. In it is the following statement:

The problem with waste management in the Greater Sydney region, in particular, is broader than just management of materials presenting as waste. Society needs to address the issue of excess waste in terms of its consumption and management of materials.

To lay the legislative groundwork for this to happen, the Act should include the object that those who generate waste be held responsible for disposing of that waste. This is otherwise known as the concept of "Extended Producer Responsibility" or "EPR".

EPR is an emerging principle that focuses on product systems and function instead of production facilities and processes alone. It is about anticipating and trying to prevent the negative environmental negative impact of products instead of reacting to pollution and wastes after production has occurred.

EPR relies for its implementation on life-cycle analysis to identify opportunities such as changes in product design and process technology, to prevent pollution and reduce resource and energy use in each stage of the product chain.

The document continues:

Overseas (in particular, Germany) the principle is being used effectively to develop and implement policies that are having significant impacts on waste generation and management through an extension of the boundaries of responsibility to include post-production and post-consumer use management of waste and more sustainable choices in the design and construction of consumer goods.

EPR also has the potential to serve as an effective instrument for moving from the current materials economy that uses materials in a linear, once only pattern towards a cyclical use and management of materials.

Under EPR, the producer takes responsibility for the amount of packaging waste generated by the product (and in more advanced systems, the whole product at the end of its life). However, this principle can only work in practice if legal responsibility for the product when it becomes waste, is clearly allocated.

In Germany, the Packaging Ordinance requires retailers to take back packaging at the point of sale. Retailers must place collection bins in the immediate area of the point of sale of the goods. It also sets quotas for the collection of packaging and waste and sorting of packaging waste.

Although legislated responsibility falls on the retailer (as distributor of packaging waste), primary responsibility for meeting the quotas has been taken on by manufacturers of packaging and "fillers" (i.e., manufacturers of goods that are placed in packaging). In 1990, 95 firms from the retail, consumer goods and packaging industries formed a non-profit company, the Duales System Deutschland (DSD). The DSD contracts waste managers, municipal authorities and recyclers to collect, sort and recycle packaging waste.

That was an initiative of the Greens when they were first elected to the German Parliament. I wish that we had a similar impact on this Parliament, because it put the industry in Germany on notice. When I recently spoke to German Greens at the Greens conference in Canberra they told me the initiative resulted in a massive and rapid reduction of waste at the marketplace and in shops.

**The Hon. Richard Jones:** It was legislated, too.

**The Hon. IAN COHEN:** Yes. In our supermarkets, products such as kitchen utensils are completely enclosed with cardboard backing and a plastic front. In Germany, in a short period of time after the introduction of this system, manufacturers were using a small, coloured cardboard hook, just large enough to print the price and the nature of the product. The introduction of these initiatives resulted in an immediate and massive reduction in the type of packaging. The Greens are passionately involved with such initiatives.

**The Hon. Richard Jones:** That is leadership for you.

**The Hon. IAN COHEN:** Yes. It is sheer silliness that we have not seen this type of initiative here, where industry and the conservation movement can work hand in hand. A special producer responsibility organisation has been formed to recover material in Sweden. In response to the 1994 European Union packaging



waste directive, the Dutch Government implemented national legislation. In Australia, there has been little or no progress with EPR. The National Packaging Covenant is a self-regulatory agreement that has had little or no impact on the reduction of waste. It refers to the same concepts that are found in this bill: product stewardship and shared responsibility for waste. The whole point of EPR is that responsibility is not shared. Responsibility rests with the producer of the product, who is in the best position to redesign the product so that packaging is reduced and the product is capable of being easily returned for reuse or recycling.

The Packaging Council of Australia website proudly states that the global packaging industry is worth \$450 billion—that is billions, not millions. It is an obscenely rich and powerful industry. The New South Wales Government is now firmly in its grip. That is why measures such as CDL, despite substantial community support, have not been imposed on industry. The Greens will move amendments that place a proper emphasis on waste avoidance and reduce consumption of resources. Those amendments and the amendments of the Hon. Richard Jones will give some direction to what is currently an aimless and hollow bill. The Government has subjugated responsibility to the very powerful packaging industry in New South Wales. Every time I buy a drink in New South Wales, I cannot believe that we do not have a 5¢ refund on the return of bottles, as is applicable in South Australia. That initiative is a wonderful example of industry and the community working together. Yet in New South Wales we are unable to move forward.

**Debated adjourned on motion by the Hon. Ian Cohen.**

### **SPECIAL ADJOURNMENT**

**Motion by the Hon. Carmel Tebbutt agreed to:**

That this House at its rising today do adjourn until Tuesday 3 July 2001 at 11.00 a.m.

### **ADJOURNMENT**

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [10.56 p.m.]: I move:

That this House do now adjourn.

### **ANZ BANK WORKERS RIGHTS**

**The Hon. IAN WEST** [10.56 p.m.]: I wish to refer to the attack by the ANZ Bank on the basic freedom of its work force—the freedom of association, expression and choice, but particularly the freedom of association. Mr Geoff Derrick, Secretary of the Financial Sector Union, has recently made representations on behalf of ANZ Bank employees to ANZ District Manager John Doherty, who sent an e-mail instruction to workplaces on 12 June banning the wearing of union badges. The pettiness of this action in no way belies the serious attack on basic democratic freedoms it represents.

That is a further step away from any affinity with the Australian community by one of the big banks. It serves to reduce morale, increase job insecurity and heighten distrust among employees and customers alike. It is an attack on its own work force. One wonders why management would do something like this to its work force, especially given that ANZ made \$907 million in the last half year, an 18 per cent increase in profit, and \$43,000 per employee in the six months to March 2001. Each employee has given a very good level of service and the bank has made healthy profits from their labour. That is fine, but one would think that ANZ Bank would treat its employees with a little more dignity and respect.

I note that the Small Business Minister's Council met last Friday in Canberra, and has called for an investigation into possible anticompetitive practices by banks against small businesses. Small businesses pay \$1.4 billion in fees each year, and that is increasing by 15 per cent per year. ANZ Bank executives reward themselves for such socially damaging and unacceptable management practices with equally offensive pay rises. Executive wages have increased by 15 per cent in just the last 12 months. The cost of living has increased by 6 per cent in that same period.

ANZ has broken off enterprise negotiations with the Finance Sector Union [FSU] over the matter of individual contracts. They are using a freedom of choice argument. ANZ is seeking to make thousands of managers subject to individual contracts. Peter Reith, the former Federal Minister for Workplace Relations, was the great champion of individual contracts. It is regrettable that Peter Reith has given notice that he will not contest the next Federal election, thereby not allowing the voters a chance to vote him out of Parliament later this year.

ANZ continues to lay off employees and contract out work. It is all done under the guise of flexibility and freedom of choice. It is ironic then that union badges should be the subject of management thinking. What does management have to fear from a union badge? Is ANZ management attempting to reinvent history? Under the current 1998 ANZ enterprise agreement, ANZ recognises the responsibilities of FSU representatives in the workplace, so ANZ management appears to be subverting its own agreement with its workforce. Will FSU representatives be fired if they wear the FSU badge?

Most other service industries allow their work force to freely wear their union badges. It is a basic right of freedom of association, choice and expression. Is ANZ management afraid it will lead to a loss of patronage? Management is doing enough on its own to turn away customers. The badges are approximately 2 centimetres by 3 centimetres and attached to a person's uniform—similar to badges worn by members in this Chamber. They are quite tasteful and attractive, and hardly impinge or impose. I congratulate the FSU for its ongoing efforts to protect the democratic rights of the work force and the wider community. I urge ANZ management to review its childish and possibly illegal instruction in relation to the wearing of badges, thus infringing on freedom of association.

### **REGULATION REVIEW COMMITTEE REPORT ON THE UNIVERSITY OF SYDNEY AMENDMENT BY-LAW 2001**

**The Hon. DON HARWIN** [11.00 p.m.]: Today we heard the news that Dame Leonie Kramer will retire as the Chancellor of the University of Sydney on 31 December. As a result, the Senate adjourned its debate on her removal. It is now some weeks since we debated the disallowance motion in the House. I return to this subject not because Dame Leonie Kramer is known to me—although I know of her individual qualities and credentials, and the service she has given to the university and others—but to take note of the Regulation Review Committee report entitled "Report on the University of Sydney Amendment By-law 2001: Report No. 16/52, dated June 2001", prepared on the subject of the disallowance motion debated some weeks ago in this House. In a sense some will regard what I have to say as an historic footnote, but it is more than that. The report of the committee confirmed many of the processes and procedural issues raised by the Opposition in debate in this House on the disallowance motion.

We will not revisit disallowance, but it is important to note that a resolution of the Regulation Review Committee was supported by all members from all parties and what they had to say about the regulation is recorded in *Hansard*. The report noted that the attention of Parliament should be drawn to the regulation on three grounds, as outlined in the Regulation Review Act. First, the committee noted that the amendments to the by-law, which preceded by way of regulation, was not in accordance with the spirit of the legislation under which it was made, even though it was legally made. The 1989 universities legislation dealt with changing the term of chancellors, but at that time legislation did not affect the term of the incumbent. Vested rights were saved in the 1989 legislation of the university, and that was the spirit of the Act. On that first ground the Regulation Review Committee found the by-law to be inappropriate.

For the same reason, the committee found another problem, a second ground under the Regulation Review Act, that the regulation has trespassed unduly on the personal rights and liberties of an individual. That is quite clear, because it is a regulation not in the spirit of the legislation. It does not preserve vested rights, as was the policy of the principal legislation. The committee has noted that. The third objection under the Regulation Review Act, which we noted in a report, was that the objective of the regulation could have been achieved by alternative and more effective means. Obviously, that was by a proper review of the universities legislation, not the sort of ad hoc response we got from the Government to what may well have been legitimate concerns raised by some members of the senate.

The appropriate process was not followed in this regard. This issue should have been dealt with by a proper review of legislation of all the universities, and vested rights should have been preserved in accordance with the spirit of the original legislation. Parliament delegates to Executive Government the right to make subordinate legislation, but it has placed safeguards in the Subordinate Legislation Act and the Regulation Review Act to ensure that checks and balances preserve civil liberties, and a number of other important concerns, such as an adverse impact on business. It would have been preferable if it were done differently, addressing concerns noted in the report of the Regulation Review Committee. We recommend that it be done differently if the time comes— [Time expired.]

## NATIVE ANIMAL TRADING

**The Hon. RICHARD JONES** [11.05 p.m.]: On 14 August 2000 the Minister for the Environment wrote to a key organisation and stated:

The pet industry and others have been advocating relaxation of laws to permit trade in many native animals, especially reptiles and frogs, but the NSW Government does not propose to allow any expansion of commercial trade in native animals through pet shops.

Neither the NSW Government nor the National Parks and Wildlife Service ... are currently considering any changes on the issue of the commercialisation of wildlife.

I have just been given a confidential document entitled, "Strategic Review of the *National Parks and Wildlife Act 1974*", which clearly indicates that the National Parks and Wildlife Service has secretly been working against the wishes of the Minister. The document reveals some interesting directions by some individuals within the National Parks and Wildlife Service. I will go through one or two of those points in the few minutes I have available tonight. The document talks about the definition of "harm". It says that the current definition of "harm" is deficient. It does not include "harass" or "disturb". Honourable members will be aware that I gave notice of legislation to change the provisions of the Act that allow for the issue of licences to kill and capture wildlife to allow for licences to be issued where the animal is not killed. For example, fruit growers would be able to harass flying foxes and remove them from their properties without killing them.

The Minister said that he would rather farmers only harass or frighten flying foxes with blank shots, and so on, rather than kill them, but there is nothing in the Act by which one can be sure that farmers will only harass the animals and not kill them. This strategic review talks about tremendous changes that are proposed to the National Parks and Wildlife Act to move the licence provision in the Act away from a general case-by-case model to a management model designed to improve conservation outcomes. It proposes that the director-general be able to require species plans of management to be created for the licensing of ecologically sustainable commercial activities—for example, whale and dolphin watching, and kangaroo harvesting. The strategic review continued:

The concept of "ecologically sustainable use" seeks to put a commercial value on both the habitat of a species sought to be "used", and the species the habitat supports, to encourage the conservation of both.

It further stated:

Ecologically sustainable use of flora and fauna has the potential to become an important conservation tool. In addition to the conservation of the species subject to utilisation, a number of other benefits can result ...

It talks about increasing the amount of information gathered about species being utilised. It is a bit like the Japanese talking about scientific whaling. The document continued:

There are arguments against allowing any use of native wildlife. For example, open range farming of native wildlife could have consequences for non-economically valued species if habitat is changed to accommodate the farmed species. Accordingly, management needs to be directed to retention of habitat and management of population numbers.

A related concern is the impact of culling on the diversity of species. In particular, management of use needs to ensure that the diversity of the species is not compromised. Accordingly, the impact of selective harvesting on the genetic stock of a space is needs to be explored.

I have talked about this in this House before. The document continued:

In order to ensure economical sustainability, there may need to be an overall species management plan either statewide or in particular areas (the management requirements may vary from area to area). Such management plans need to be flexible enough to take into account changing circumstances and knowledge.

It is proposed to give the Director-General the power to direct that such plans be prepared in situations where he or she is of the opinion that activities being licensed have the potential to affect the conservation status of a species or make a species threatened.

The document refers to a new provision to specifically allow for harvesting, ranching or farming of protected or threatened species. It then refers to the most controversial of these changes: the issuing of licences for the harvesting of native fauna and flora. What is being proposed is a change in the status of fauna and flora in this State to allow for commercial trade. It includes reptiles and birds—the 19-bird rule is going. Secretly, behind the Minister's back, the National Parks and Wildlife Service or certain people in the service have been working against the current Act and the Minister's intentions, trying to convince the Minister to increase commercialisation of our wildlife—both fauna and flora. That is a disgrace.

### NEW SOUTH WALES-EAST ASIA BUSINESS ADVISORY COUNCIL

**The Hon. HENRY TSANG** [11.10 p.m.]: I am pleased to report to the House that the New South Wales-East Asia Business Advisory Council held its quarterly meeting at Parliament House on Monday 25 June. The advisory council has been busy with members involved in and supporting the Department of State and Regional Development's activities, most recently with the Small Business Month. At its last meeting, the East Asia Business Advisory Council adopted its business plan for the coming year. The business plan will form part of the advisory council's future meetings and is designed to assist its role in advising the New South Wales Government on new trade and export opportunities for New South Wales businesses in the region and for the region to have investment opportunities in New South Wales.

The Department of State and Regional Development is the Government's principal trade and investment agency. The council will seek to take advantage of Internet technology to communicate with New South Wales businesses and disseminate information on trade and investment opportunities to assist them in reaching out to the region. The council members will play a direct role in this process with the advisory council tapping into their respective areas of expertise. The New South Wales Government is proud to have a council of such high calibre with members' expertise ranging from small to medium enterprises, to the media, through to trade and investment experts. Equally, where New South Wales companies can benefit most is through the members' unique insight into the region.

The members are all successful in their respective fields and have a strong network of contacts throughout east Asia of which New South Wales businesses can take advantage. This will be achieved through the council's unique position to advise the Government and New South Wales businesses on strategies in developing successful commercial relations in the region. As well, it will assist New South Wales companies with market and cultural information and business referrals. The business plan will be complemented by a series of projects which the advisory council will explore throughout the year. Specifically, the council will hold a business networking function for New South Wales and east Asian businesses, including patronage from ambassadors from the region.

Further, an East Asia Business Matching Forum will provide New South Wales businesses with the opportunity to meet their Asian counterparts. Council members will be working in consultation with the Department of State and Regional Development to organise workshops and forums enabling New South Wales businesses to meet and work with local Asian businesses and visiting delegations from the region. It will also assist in welcoming visiting trade delegations, as well as contributing to pre-mission briefings for New South Wales businesses.

The council will make an important contribution towards further developing the department's existing programs, such as the popular and excellent trade missions and market visits. Council members contribution to the State's wellbeing will be manifested in increased investment and trade with New South Wales, resulting in more jobs for future generations. Importantly, these jobs are not just for big centres. The council has made one of its prime objectives support to increase jobs and investment in rural and regional New South Wales. For that reason, the council expects to hold one of its meetings in the Illawarra, which the Department of State and Regional Development informs me is keen to host the visit. This is going to be an exciting and productive year for the council. I look forward to reporting back to the House on its activities. I thank council members for their enthusiasm and support for a prosperous New South Wales.

### HEALTH SUMMIT 2001

**The Hon. JENNIFER GARDINER** [11.14 p.m.]: Recently I had the pleasure of participating in Health Summit 2001, which was held at Crescent Head. The theme of that community-based initiative was "Finding a better way". The summit was about organising and delivering health services on the mid North Coast. For a number of years there has been a large amount of community anxiety in that part of New South Wales about the status and future operations of local hospitals, in particular the Kempsey District Hospital and the Macksville and District Hospital.

Proceeds from the summit were to be directed to assisting Kempsey District Hospital in its ongoing operations. The goal of the Health Summit was to identify different ways to address health service and aged-care issues in the local area. For example, the summit participants discussed moving aged persons away from nursing homes towards community care, and providing opportunities for them to enjoy life in familiar surroundings. We heard about extensive research material on alternative models of care that might be trialled in an area such as the North Coast.

The participants believed that for those in nursing homes—and there is an increasingly ageing population in that part of the State—there was a need to maintain personal dignity and independence in a community surrounding, and for the opportunity to still enjoy a rich life within that environment. There was, of course, a lot of discussion about how to ensure proper community involvement in making strategic plans for hospitals at a time when medical technology has changed so rapidly. Again, there is a lot of concern in that part of the State about the level of community participation in devising strategic plans for local hospitals.

At the summit there was discussion about how each hospital could best fit into the overall matrix of health service delivery, with hospitals not simply duplicating each other's roles but each being given a special role that complimented the roles of other health services in the area. There was a pleasing emphasis on wellness. Indeed, the Kempsey recreational cycling club rode from Kempsey to Crescent Head and back as part of the summit agenda. It is quite a challenging ride, especially the ride home, and it was terrific to see so many local people enjoying a real work-out in connection with the summit. I wish I had had the time to do the ride myself. I must say there was an extraordinary range in the level of fitness of the participants, but it was great to see them all doing their best.

Many young people participated in the summit, hence the issue of drugs in rural communities was discussed, and many of the young speakers stressed the need for older people not to be in denial about the availability of drugs in small country centres and to talk frankly about the issue. I would like to congratulate David Fry, Dianne Nolan and other organisers of the Health Summit on their initiative, which was a constructive community-based initiative with ongoing follow-up on their recommendations. I thank them for their hospitality and the opportunity they gave the National Party member for Oxley, Mr Andrew Stoner, and me to participate in the summit. I wish them well in following up on the suggestions made by community members from throughout the district.

#### VIETNAMESE AUSTRALIAN COMMUNITY

**The Hon. Dr PETER WONG** [11.18 p.m.]: A few days ago former Fairfield Councillor Phuong Ngo was convicted of the murder of former member of Parliament Mr John Newman. I understand that the conviction may yet be appealed, and I will make no comment about the case itself. However, regardless of the final outcome in the matter, the Vietnamese-Australian community as a whole must not be blamed for the actions of any one person, and should not suffer or be made to feel shame because of one person.

It is important for us to recall the major positive contribution over 25 years of the Vietnamese-Australian community. The Vietnamese community tends to be very innovative, with a high proportion of entrepreneurs and business people. It is a good example of migrants providing dynamism to our economy. The future importance of Vietnamese Australians appears to be assured, with the outstanding academic performance of so many Vietnamese students. This is, of course, a great source of community pride, and justifiably so.

The tenacity and resourcefulness of the community is well known. It was displayed dramatically when so many thousands risked long and dangerous sea trips to seek political asylum in Australia, Vietnamese greatly value the freedom they have found in Australia, and in return are extremely loyal to this country. It is a matter of record that 93 per cent of Vietnamese refugees and migrants have taken out citizenship—one of the highest, if not the highest, citizenship rate of all migrant communities.

Vietnamese Australians have had a great impact in religious and spiritual development in Australia, through a number of denominations. One part of this impact has been a major contribution to the growth and development of Buddhism in Australia. The very beautiful Phuoc Hue Temple in Wetherill Park is just one manifestation of this. The community has also had a large influence in promoting Christianity. What has most impressed me over the years about members of the Vietnamese community has been their great generosity and community spirit. It is most extraordinary, and a good example for us all, that whenever there is someone in need anywhere in the world the Vietnamese community is willing to help, and help in a very practical way.

I find this unselfish attitude very inspiring. If there are serious floods in Australia, and fellow Australians need assistance, the Vietnamese community will raise funds to send to those who need it, or lend a hand in some way. That is often done through their temples or church groups. If there is a major disaster anywhere in the world one can guarantee that the Vietnamese will be the first to reach into their pockets or volunteer some time to alleviate suffering.

The Vietnamese community is heavily involved in the annual Red Cross door-knock appeal. Every year they make up one of the biggest contingents of volunteers in the Clean Up Australia campaign. Every year the

community holds the Vietnamese Lunar New Year Festival, which is currently at Warwick Farm. Incidentally, little assistance is provided by any level of government. It is always an outstanding success, and a fantastic display of many parts of a rich traditional and contemporary culture. This culture is generously shared with all Australians and it is on occasions like this that I feel particularly blessed to live in Australia, and doubly blessed to be able to share our country with the Vietnamese Australian community.

### ***NEGOTIATING WITH YOUR SCHOOL BOOK LAUNCH***

**The Hon. JAN BURNSWOODS** [11.22 p.m.]: On 26 June I had the great pleasure of hosting the launch of a book called *Negotiating With Your School*. The book is a practical guide for parents, written by David West. I have known David West for many years and have admired his work as a teacher and a school counsellor, and more recently as a psychologist and mediator. David has published, through Choice Publications, a practical series of advice to parents basically on how to deal with a school if their child is having a problem at school. To give some idea of the flavour of this practical book, David says in the introduction:

This is a book for parents. It is based on the idea that when there are problems at your child's school, it is much better for your child to stay at this school and to try to solve the problems, than to move to another school. Don't move schools as a first choice. Everything is negotiable and with the help of this book parents can solve problems for themselves.

There are 17 chapters in this slim but very useful book which provides parents with a range of advice. It contains a number of case studies and gives a variety of sample letters. The book very wisely makes the point that when children and their parents are having trouble dealing with a problem at school, sending a letter is certainly not the first way to go. The book gives an amazing variety of facts and figures about schools, not only in New South Wales but in other States as well. The book deals with the more important and difficult issues that parents, carers, advisers and children face when a problem arises at school, for instance, the problems of privacy and confidentiality. There is a sensible chapter that deals with suspensions and whether they work. What does the research say? There are examples in relation to suspensions not only from Australia but from overseas.

The book has an interesting chapter that deals with the role of parents who are essentially absent from the child's day-to-day life at school—mostly fathers when parents are separated—and suggests some positive roles that they, too, can play. The fact that Choice has published David's book shows that it will play a useful role in the variety of material that is available for parents. It fills the gap in dealing with it from a practical point of view for children, particularly those in secondary school, but it also deals with a range of problems from very young children through to children in the post-compulsory years.

For instance, one whole chapter is devoted to the first days of school. However, the book then goes on to deal with children in later years. It was a great pleasure for me to play a role in the launching of this book and in helping to ensure that it is made known to parents in the wider community so that they can follow some of its examples. I hope to see further work—not necessarily by David—other booklets that also offer a range of advice, contacts on how to get help and so on, similar to that offered by David to parents.

**Motion agreed to.**

**House adjourned at 11.26 p.m. until Tuesday 3 July 2001 at 11.00 a.m.**

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