

LEGISLATIVE COUNCIL

Tuesday 16 October 2001

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

The President offered the Prayers.

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

ADMINISTRATION OF THE GOVERNMENT

The PRESIDENT: I report the receipt of the following message from Her Excellency the Governor:

GOVERNOR,

Professor Marie Bashir, Governor of the State of New South Wales, has the honour to inform the Legislative Council that she re-assumed the administration of the Government of the State on 30 September 2001.

Marie Bashir,
30 September 2000

ASSENT TO BILLS

Assent to the following bills reported:

Dental Practice Bill
Heritage Amendment Bill
New South Wales-Queensland Border Rivers Amendment Bill
Physiotherapists Bill
Police Service Amendment (Testing for Gunshot Residue) Bill
Psychologists Bill

REGISTER OF DISCLOSURES

The PRESIDENT: In accordance with clause 21 (1) of the Constitution (Disclosure by Members) Regulation 1983, I table a copy of the Register of Disclosures by Members of the Legislative Council for the period 1 June 2000 to 30 July 2001, provided to me by the Clerk.

Ordered to be printed.

MEMBERS' PAGERS

The PRESIDENT: I inform the House that a new pager system has been installed and the old system has been disconnected. The new pagers are similar in appearance to the old units although their operation is slightly different. Each is supplied with an instruction booklet plus a one-page flyer that provides simple instructions for their use. All members should ensure that they collect their new pager from their party Whip or the Building Services Office in the case of Independent members.

TABLING OF PAPERS

The Hon. Carmel Tebbutt tabled the following reports:

Animal Research Act 1985—Report of Animal Research Review Panel of New South Wales for year ended 30 June 2000

Professional Standards Act 1994—Report of Professional Standards Council for year ended 30 June 2001

Ordered to be printed.

COMMITTEE ON CHILDREN AND YOUNG PEOPLE**Report**

The Hon. Peter Primrose, on behalf of the Chairman, tabled report No. 4/52 entitled "Amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000 Regarding Employment Screening", dated October 2001.

Ordered to be printed.

STANDING COMMITTEE ON LAW AND JUSTICE**Report**

The Clerk announced, pursuant to the resolution of the House of 25 May 1999, the receipt of report No. 17 entitled "A NSW Bill of Rights", dated October 2001, together with minutes of proceedings, submissions and transcripts of evidence.

The Clerk announced that, pursuant to the resolution of the House, he had authorised the report to be printed.

The Hon. RON DYER [2.38 p.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by the Hon. Ron Dyer.

PETITIONS**Sandon Point Heritage Protection**

Petition praying that Sandon Point be heritage protected and proclaimed as an Aboriginal place, received from **Ms Lee Rhiannon**.

Compulsory Drug Rehabilitation Centres

Petition opposing the establishment of medically supervised heroin injecting rooms, and praying that the House pass legislation to establish compulsory drug rehabilitation centres, received from **Reverend the Hon. Fred Nile**.

Circus Animals

Petition praying for opposition to the suffering of wild animals and their use in circuses, received from **the Hon. Richard Jones**.

Council Pounds Animal Protection

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

Wildlife as Pets

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

MEMBERS' PAGERS

The PRESIDENT: Order! Because of the dreadful noise that the new pagers of members emit, I ask members to ensure that whilst they are in the Chamber their pagers are turned off.

The Hon. DUNCAN GAY: Madam President, the problem with the new pagers is that if they are accidentally touched they emit a noise. We have tried to avoid the problem.

The PRESIDENT: I rely on the good sense of members to not make strange noises in the House.

LIQUOR AND REGISTERED CLUBS LEGISLATION AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [2.43 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 bill before the House makes a range of miscellaneous and machinery amendments to the Liquor and Registered Clubs Acts.

The amendments are part of the Government's ongoing program to ensure that these Acts properly reflect the needs of the liquor and hospitality industries, while also taking into account the interests of the community and the need for appropriate controls over the sale and supply of liquor.

It has been said before that the liquor laws are not static, and because of changing values and expectations, amendments will continue to be placed before this Parliament. This bill is the latest manifestation of that.

The Liquor Act allows hotel licensees to apply to sell liquor at a function away from their premises. In these cases, the hotel licence is to be taken to be a function licence, and is subject to the function licence provisions in the Liquor Act.

Concerns have recently been expressed about hotel licensees selling liquor at functions that are hundreds of kilometres away from their hotel premises. Legitimate questions have been raised about the ability of a hotel licensee to properly supervise their premises while also supervising such a function. There are also concerns as to whether an hotelier has the necessary experience and qualifications to supervise the sale and supply of liquor at a function which may be attended by thousands of people.

In one example, an hotelier's licence in Maitland was used to supply liquor for Olympics related events held in The Rocks at Sydney. The same licence was also used for a concert in The Domain attended by tens of thousands of people. In another example, an hotelier's licence in Dubbo was used to supply liquor at an outdoor event in Tamworth during the Country Music Festival.

The Government shares the concerns that have been raised—especially where distances of hundreds of kilometres are involved. It is also questionable whether a licensee from a small country hotel is qualified to supervise the sale and consumption of liquor at a major rock concert attracting around 50,000 people in The Domain.

Currently, the liquor laws require hoteliers applying to sell liquor at a function off their premises to lodge a copy of the application with the local council and police. However, the Government considers that additional specific controls—such as limits on the distance involved, the need for appropriate qualifications and experience, and the concurrence of the local council—may also be necessary in some circumstances.

Therefore, the bill amends the Liquor Act so that these types of additional controls can be prescribed in the Regulation. Inserting a specific regulation-making power will allow consultation to occur with key stakeholders—such as the hotel industry, police, local government, and the Liquor Administration Board—in settling the detail of any new controls.

Many race clubs in New South Wales have a Governor's licence, which provides maximum flexibility for the operation of racecourse facilities. However, Governor's licences may only be issued to those race clubs located on Crown land. Race clubs not on Crown land have other types of liquor licences—such as a function licence—which are far more restrictive, and often do not allow the race club to get the maximum benefit from its club facilities.

It is important to note that many of the facilities at race clubs in this State have been developed over the years with Government assistance. They are often among the best that are locally available for functions, conferences and seminars—particularly in country towns.

Unfortunately, because of restrictions in the liquor laws, it is not practical for some race club facilities to be available to the public, except at official race meetings. This is unfortunate, as it means that race clubs cannot offer their facilities for public hire, and thereby get maximum use out of them.

The Government has considered amending the function licence provisions in the liquor laws for race clubs to overcome some of these problems. However, that will create anomalies in the law, and discriminate against other function licence holders.

Instead, the bill amends the Liquor Act to make it clear that all horse racing clubs—whether or not they are on Crown land—are entitled to apply for a Governor's licence for their racing facilities, and thereby gain maximum flexibility out of their premises. In this way, the special nature and benefits to this State of the racing industry will be recognised, as will the public investment over many years in race club facilities.

This approach will also allow liquor licensing for horse racing clubs to be standardised across the State. Race clubs, at their own convenience, will be able to apply for a Governor's licence to replace their function licence, or any other liquor licence they currently have, if they wish to do so. Those race clubs that do not wish to change their current licensing arrangements will not be required to do anything.

The Liquor Act requires that a manager approved by the Licensing Court be appointed to manage licensed premises where the liquor licence is held by a body corporate.

The Chairperson of the Liquor Administration Board has raised concerns that approved managers, when appointed to manage a specific licensed premises, are not always required to address liquor harm minimisation issues, given that they need only notify the Board. This is inconsistent with the requirement in the Liquor Act applying to licensees that they specifically address liquor harm minimisation issues every time they are approved as the holder of a licence.

The bill therefore amends the approved manager provisions of the Liquor Act to ensure that, where an approved manager is appointed to manage licensed premises, that manager satisfies the Liquor Administration Board that they understand and appreciate their general harm minimisation responsibilities. This will include approved managers having to demonstrate that they have knowledge of, and can put in place, the practices required at that premises to ensure the minimisation of alcohol related harm.

The bill also addresses an important issue that is resulting in substantial delays in the Licensing Court. Those delays are associated with an existing requirement in the Liquor and Registered Clubs Acts that certain applicants obtain relevant planning and development approvals from their local council before making their application to the Court.

The Liquor Administration Board has advised that this requirement is associated with substantial Court delays because some private objectors are exploiting the provision by claiming that the Court has no jurisdiction to consider an application.

The Government understands that these arguments—which can take up many days of court hearing time—are generally made to frustrate and delay an application, possibly in the hope that the applicant will not be able to afford to continue. The Liquor Administration Board has advised that in no cases to-date has the local consent authority—which is the expert authority that actually issues planning approvals—supported these arguments.

The Government is concerned about the matters raised by the Board. If there is any question about planning approvals, it should be left to the local council to make use of its statutory right and argue that before the Court. Other interests should not be permitted to frustrate and delay applications in this way.

Therefore, the bill amends the Liquor Act so that only those who have a genuine interest in planning approvals—that is the local consent authority, the police, and the Director of Liquor and Gaming—can raise issues about the Court's jurisdiction in relation to the requirement for planning approvals to accompany an application.

The amendments will discourage existing licensees from raising frivolous objections based upon some alleged failure to comply with the requirements of the respective Act. They will apply to new applications, as well as applications that have already been lodged with the Court and are yet to be determined.

However, if a licensee or other persons have legitimate concerns about planning approvals, they will still be able to raise those with the local council, the Director of Liquor and Gaming, or the police, and ask that they intervene in an application.

These amendments are important in ensuring that precious Licensing Court time is not abused for commercial purposes. At the same time, I want to make it clear that they do not affect the right of stakeholders—including existing licensees—to object to applications on other grounds.

The Carr Government has strengthened the underage drinking laws over the past few years. Those laws represent a key strategy in reducing minors' access to alcohol.

The Internet is a relatively new and unregulated access point through which young people will attempt to obtain liquor. It is technology that is particularly attractive to young people, and the "remote" nature of ordering liquor over the Internet presents new challenges for regulators.

An amendment in the bill proposes new controls that will apply to the sale of liquor via the Internet, mail order, telephone and facsimile orders. The controls include requirements that will reduce the likelihood of liquor being delivered to an underage person. There are also appropriate sanctions if the required controls are not implemented, or if liquor is delivered to a minor. This will assist compliance and enforcement efforts.

The peak liquor and club industries associations have been consulted about the proposal, and I am pleased that there is general support for these measures. There would also be a targeted education campaign prior to the introduction of these new controls to ensure licensees, registered club secretaries, couriers and the general community are aware and understand their obligations.

This amendment further strengthens the underage drinking laws, and will be instrumental in "blocking off" another potential source of liquor for minors.

Finally, the bill also contains some statute law and machinery amendments to the Liquor and Registered Clubs Acts. Those amendments will, for example, bring part of the appeal provisions in the Registered Clubs Act closer into line with the Liquor Act, and also allow registered clubs to collect membership fees on a monthly basis.

I commend the bill to the House.

The Hon. GREG PEARCE [2.44 p.m.]: I lead for the Opposition on this bill. The Opposition will not oppose the bill but has given notice of a number of amendments that it intends to move, some of which I understand the Government may well except. When the Minister introduced this bill in the other place he said that it makes a range of machinery and miscellaneous amendments to the Liquor Act and the Registered Clubs Act. He commented that since he has been the Minister for Gaming and Racing there has hardly been a time when amendments to liquor legislation have not been before the Parliament in some form or other. The Minister put that down to the fact that continuing change in society impacts on the industry and necessitates amendments to the Liquor Act and the Registered Clubs Act. The reality is that the Government is so tired and bereft of ideas that it has to dredge up any minor matter to continue its legislative program. In introducing the bill in the other place the Minister said:

The amendments are part of the Government's ongoing program to ensure that the Acts properly reflect the needs of the liquor and hospitality industries.

Where is that program? What is it? This Government does not have such a program. The real focus of the Government is on looking after itself and select interest groups. Of great concern, although of some interest, is that the Government is very well advised about the interests of those who own investments in the liquor industry. In particular, one senior member of the Government has interests in a number of hotels, namely the Mercantile, the Orient and the Hunters Hill hotels. However, we are assured that that Minister does not influence the Government's policies, because he absents himself from Cabinet when it discusses matters touching on gambling or the liquor industry. In an article in the *Daily Telegraph* on the 17 August 2001, referring to the Minister for Police, David Penberthy wrote:

It is his pub and pokie interests which go to the heart of his effectiveness as a minister.

Earlier in the article David Penberthy wrote:

He stands accused of dereliction on two counts—failure to serve the needs of his electorate, and failure to secure the good management of the police service.

Matters relating to the Police Service are very important when considering gaming and liquor legislation and policy. The article also raised the role that the Minister for Police plays, or at least ought to play, when considering matters such as the current appalling record of hold-ups and crime in pubs. Across New South Wales there are at least six armed hold-ups each month at clubs and pubs. Last July there was a shooting murder at Leichhardt's Taverners Hill Tavern, which shows that criminals are targeting gaming premises because of the money they attract.

I ask the Government where is its program on gaming, where is its program on the liquor industry, and where is its program to assist the hospitality industry in this State? What does the Government respond to? The Minister said in the other place, as part of his explanation for bringing forward this legislation, that when he was on his way through north-western New South Wales just after Christmas 2000 he received a hurried phone call from the mayor of Tamworth, Mr Warren Woodley. I assume that at that time Mr Woodley, a well-respected Tamworth businessman, would have been very forceful in expressing his concerns to the Minister.

The Minister said in his second reading speech that he said he took great exception to the circumstances raised by the mayor, whom I assume was Mr Woodley, and indicated that as soon as he returned to Sydney he would take action. It was just after Christmas 2000 when he was told about this important issue and he said that he would get straight onto it on his return to Sydney. As another example of the Minister's great activity and initiative, he took just on 18 months—until June 2001—to introduce this legislation in the other House. Now, in October 2001, we are finally dealing with the legislation. The Minister also took note of the plight of race clubs within the State, which he said had been of great concern for some time. That plight is of very significant concern but does not appear to be of concern to the Government or the Minister. Through this legislation the Minister is fiddling about with Governor's licences and other bits and pieces while the racing industry is in crisis.

In May 2001 press reports revealed that more than 70 per cent of the 208 race clubs in New South Wales operated at a loss last financial year. As many as 13 New South Wales clubs are tipped to be technically insolvent by the end of this year, with that total predicted to swell to 62 by 2005. TAB Ltd supremo Warren Wilson was reported in the *Daily Telegraph* of 31 May 2001 as saying that the State's racing industry lost nearly \$7.5 million last year. He warned of dire ramifications unless a major restructuring of racing's three codes was undertaken immediately. He went on to state that the TAB's concern about the long-term viability of the New South Wales racing industry and its estimated 50,000 employees had been validated by an independent study

conducted by leading financial analysts Salomon Smith Barney. The weak financial position of the New South Wales racing industry threatens the long-term viability of that industry and the jobs that it provides. What is the Government doing about that? Where is the program and where is the plan? There are none. We have only this machinery and miscellaneous legislation—produced with all the rapidity that the Minister could muster some 18 months after being alerted to problems in the industry.

There are other difficulties with the administration of gaming and racing in this State. When the bill was introduced in another place the shadow Minister highlighted the fact that it will produce extra work for the Licensing Court and the Liquor Administration Board. Like me, he has pointed out in other debates that the Minister for Gaming and Racing is about slashing his department. That has caused a significant backlog in the Licensing Court, which is under-resourced. Internal departmental documents refer to those cutbacks and the problems they create.

I am slightly heartened by the fact that the Minister has promised that the industry—but not the Government—will introduce support measures in association with this legislation. He referred particularly to a targeted education program, which will be established prior to the introduction of the new controls to ensure that licensees, couriers and the general community are aware of and understand their obligations. I want to see that sort of education program and I seek an assurance that it will be implemented. The Opposition intends to amend the legislation with regard to the bill's remote sales provisions, which allow sales by mail, telephone, facsimile and over the Internet. The Government has indicated that it will move amendments that address most of our concerns, but one or two gaps remain.

At a time when this State is facing major financial problems in the racing and club industries, devastating social and crime problems as a result of the Government's addiction to poker machine revenue and an uncertain future in the areas of tourism, entertainment and hospitality as a consequence of current international traumas, the best the Government can do is introduce make-work legislation and amend miscellaneous and machinery provisions. It does not have a program or a plan for the future. The Opposition will not oppose the bill, and I look forward to discussing the amendments in Committee.

The Hon. IAN COHEN [2.54 p.m.]: The Greens support the Liquor and Registered Clubs Legislation Amendment Bill. A couple of years ago legislation was passed to enable a hotelier to supply liquor at a function held off the hotel premises through the issue of a function licence. For example, if a country town wanted to hold a function outside the town it could be licensed by the nearest hotel. However, in recent times that power has been abused in certain circumstances. As I understand it, a hotel in Maitland recently issued a function licence for a function in The Rocks, and there have been similar examples of the misuse of this power. This bill will deal with the issue by regulation as it was decided that it would be impossible for the bill to include relevant criteria and conditions, particularly regarding the geographical distance from the regulating hotel. I think this bill is a step in the right direction, and the Greens support it.

Reverend the Hon. FRED NILE [2.55 p.m.]: The Liquor and Registered Clubs Legislation Amendment Bill is concerned with the supply of alcoholic beverages. Every time the House considers legislation such as this members must remember that Australia's number one social problem is alcohol abuse and that we should continue to take steps to reduce the impact and availability of alcohol. This bill emphasises the promotion of liquor harm minimisation in different areas, including the sale of liquor to be consumed at a function held off the hotel premises. I am reminded of a common occurrence in the Northern Territory, which may also happen in western New South Wales, whereby those with a liquor licence supply alcohol directly to Aboriginal communities—often against the wishes of community elders—creating major social and health problems. I urge the Government to monitor the situation and prevent the sale of liquor to Aboriginal communities.

The bill tightens provisions relating to the supply of liquor via telephone or Internet orders and ensures that liquor is not delivered to a minor or to empty premises. I note that an offence is committed under section 114 of the Liquor Act by any licensee who supplies liquor to a minor. This offence extends to the person who delivers the alcohol and to the minor who takes delivery of it. However, the bill does not make it an offence for a minor to order the liquor in the first place. Police may be unable to charge a minor who takes delivery of alcohol but, if it becomes an offence for an under-age person to order liquor, there will be some record of that individual's illegal activity. I stress this point because the creation of such an offence will stop minors ordering liquor in the first place. The desired result is not so much to charge more minors with this offence but to educate people that liquor must not be sold to minors and that it is against the law for minors to order it. It is not clear whether the bill addresses that latter point. The bill deals also with the fitness of persons to stand for re-election as a secretary or member of a registered club. Such people will be precluded from standing until any appeals hearings are completed unless the Licensing Court orders otherwise, which I think is a positive move.

One matter that concerns me—which is regarded as a minor matter—is that objections relating to the jurisdiction of the Licensing Court to hear and determine an application for a liquor licence based on whether the required planning approvals have been obtained can be raised only by local councils, the Commissioner of Police or the Director of Liquor and Gaming. Some of the proposed amendments may cover this aspect, but it is very restrictive to allow only councils, the police or the Director of Liquor and Gaming to lodge objections. Ratepayers associations, a group of residents within a precinct committee, community organisations and local churches—all of whom would have concerns about the availability of alcohol—should also be able to express concerns. I urge the Government to ensure that the provision is not as restrictive as it appears to be. This aspect may be covered in other legislation, but it is not mentioned in the bill or the background papers. The bill is a mixture of good measures and some measures that cause concern. We support the bill in principle, but with those reservations.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.01 p.m.]: The Australian Democrats support the majority of this bill, but have some concerns about certain aspects of the bill that were referred to by Reverend the Hon. Fred Nile. Schedule 1 to the bill amends the Liquor Act 1982 and schedule 2 amends the Registered Clubs Act 1936. Items [7] to [11] deal with the appointment and dismissal of managers of licensed premises. Item [12] inserts new section 128 in the Liquor Act to regulate the sale of alcohol through the Internet and other communication mediums. The prohibition of the sale of alcohol to minors under section 114 of the principal Act will still apply to this new section, and breaches of this Act are backed up by appropriate penalties.

Excessive alcohol consumption obviously has an adverse effect on a person's health. Purchasing alcohol over the Internet is more convenient for people with problem drinking. We have all heard stories of taxidrivens being told to bring a bottle of whisky to a certain address. When they get there they ring the doorbell, put the alcohol to the side of the door, and then watch a hand with some money come around the door. The taxidrivens never see the faces of those people because they are embarrassed about their alcoholism. People who sell alcohol have to be identified by displaying their vendors' licences on advertising material or on web pages, but there must be proof of age of the purchaser.

Of course, with proof of age requirements young kids often have alcohol bought for them by kids who are only a few years older. Some time ago I was walking down a street in Bondi and saw a lot of kids, as young as 12 and 13, sitting in the gutter. I wondered why they were there. I went into Kemeny's, the local liquor outlet, and saw a girl who would not have been 16 years of age purchasing liquor. When I walked back around the corner she was with the other kids sitting in the gutter drinking the liquor she had purchased. Obviously that is cause for concern, and that concern would be worse for purchases made over the Internet. Identification should be a two-way process. I ask the Government to state in reply how it will attack this problem. I ask the Government for an assurance that people purchasing liquor over the Internet will also have to provide proof of age.

The Hon. Ian Macdonald: How?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is a problem that the Government must address if it is going to allow sales of alcohol via the Internet. It is absurd to address the problem by requiring the vendor to provide identification without requiring the purchaser to provide identification. It is absurd to identify a problem and solve only half of it. We also have reservations about items [4] and [5] of schedule 1. As Reverend the Hon. Fred Nile pointed out, the Licensing Court cannot hear submissions from a third party on an application for the conditional granting of a licence for a venue hosting a special event. These proposed amendments prevent the concerns of local residents being heard by the Licensing Court. Again I ask the Government to outline how it will address this problem.

Schedule 2 contains amendments that will allow the Licensing Court to issue conditional registrations for premises being constructed or altered. Items [4] to [7] in schedule 2 deal with the regulation of card-operated gaming machines. These are minor amendments and do not consider implementing a uniform system by which problem gamblers could be monitored. A number of different manufacturers, in competition, are developing an elaborate card system for clubs for use in gaming machines. The standardisation and linkage of machines allows participation in jackpot schemes, which result in bigger winnings. Monitoring systems that involve a personal identification card could quite easily be linked to problem gamblers. The cards could contain statements by problem gamblers about the amount of money they are willing to spend—or lose, to put it bluntly—in a certain period of time. The card could contain information such as, "I am able to lose \$100 a week and then I would like the machine either to not function or flash in front of me the message 'You have lost your money. Please go home and tell your wife'," or a message that too much money had been gambled. Excellent technological links

are available for people to obtain money, including automatic teller machines in the foyers of casinos and clubs; they were not supposed to be available in those places. If gaming machines can be linked for jackpot purposes the same technology could be used to help problem gamblers.

We all agree that the genie is out of the bottle. We all agree that New South Wales has a gambling problem. It is not in the interests of gambling venues to stop people gambling because those venues would lose money. It is like the tobacco industry being expected to be, or pretending to be, interested in stopping people smoking. Of course, it was not interested in doing so, and that fiasco has lasted 50 years. We have now let the gambling genie out of the bottle. New South Wales has a huge number of gaming machines, and a card system is being developed, not for the benefit of problem gamblers but to link jackpots and for the convenience of clubs.

It is time that regulations were made and that this Government, which professes to be concerned about gambling, demanded that the technology be standardised by a certain date. Given the number of gambling machines in Australia, we have sufficient pull in the market to set a standard or demand uniformity of standards—perhaps by 2005 or 2006. By that time all new machines should have standardised technology requiring an identifiable card which will state how much money gamblers will lose, warn them in a certain format or, at best—if they demand technological self-exclusion—not enable them to play the machine. That should be monitored. In a few days, perhaps even today, we anticipate legislation which will provide that all hotels will close for some hours each day, on the assumption that it will reduce problem gambling. Yet technology that would be far more effective and more certain is not even being considered.

The Government is not giving enough thought to these matters. It is disappointing that at this time, when technology in machines is being debated and regulations proposed, these issues are not even being considered. If the Government is concerned about changes to the liquor Acts and Acts that regulate the use of gambling machines, it should be more thorough. It should have a research-based approach to minimising gambling problems instead of allowing the issue to ping-pong between clubs and pubs, giving a lower priority to the real interests of gamblers and research.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.11 p.m.], in reply: I thank all honourable members who contributed to the debate. Both the Hon. Dr Arthur Chesterfield-Evans and Reverend the Hon. Fred Nile referred to liquor sales to minors. The proposed measures are designed to enhance enforcement of the law if police detect a breach. The proposal in the bill clarifies the obligations of licensees, club secretaries and couriers with regard to the sale and supply of liquor in circumstances other than traditional bricks-and-mortar licensed venues. It also serves as a warning that care must be taken when accepting orders and delivering liquor to private homes or elsewhere. Appropriate sanctions are provided if licensees, club secretaries or couriers fail to comply with the ordering and delivering requirements set out in the amendment. Minors will commit an offence if they take delivery of liquor.

Licensees and club secretaries who do not implement control measures of the ordering stage will be liable to a maximum penalty of \$2,200. If liquor were to be delivered to a minor, the licensee, the club secretary and the person who delivered liquor would each be liable to a maximum penalty of \$5,500. A more significant maximum penalty of \$11,000 and/or 12 months imprisonment would apply if the offence occurred in aggravated circumstances, for example, if young children or large amounts of liquor were involved. This is the same penalty that currently applies to the sale and supply of liquor in licensed venues. It is therefore in the interests of those who deliver liquor to demand proof of age if they suspect the person taking delivery is under 18 years of age. A minor who takes delivery of liquor would be liable to a maximum penalty of \$1,100. A person who orders or requests a minor to take delivery of liquor would be subject to a maximum penalty of \$2,200.

To aid enforcement it is proposed that offences would be subject to on-the-spot fines of \$55 for minors and 10 per cent of the maximum penalty for adults. The nature of home delivery makes it appropriate for the legislation to provide defences to prosecution for offences in certain circumstances. For example, it would be a defence to a prosecution if a minor accepted delivery where it is proved that the minor was ordered or requested by his or her parent or guardian to take delivery of liquor. A defence would also be provided for a licensee, club secretary and courier who took all reasonable precautions to avoid delivering liquor to a minor. The Hon. Dr Arthur Chesterfield-Evans asked whether amendments to section 40 of the Act would affect the right of rejection. The amendments apply to very specific objections concerning planning approvals which apply to proposed licensed premises in certain circumstances.

As a result of the amendment the Licensing Court will not be bound to hear such objections, although it will be able to hear them if it wishes. The court will be required to hear such objections from the local council, the Director of Liquor and Gaming or the police. This is appropriate, as the local council or other consent authority is expert in determining whether planning approvals are valid.

Private objectors will still be able to raise issues in relation to planning approvals through the local council, the director or the police, if they wish. The amendments will not affect the statutory right that currently exists in relation to other grounds of objection for liquor licensees and other interested parties to an application. The objection provisions of the Act have not been amended, and the existing grounds of objection remain in place. The amendments will stop mostly frivolous argument about the Licensing Court's jurisdiction to hear an application for a liquor licence. This will stop jurisdictional arguments being raised by competitors who are motivated to make it as difficult as possible for business operators to have their applications heard by the court.

If competitors wish to take action against an application for a licence they will need to do so within the confines of the objection provisions in the Liquor Act. That is how the law was intended to operate in the first place, and these amendments will clarify that. The Government appreciates the concerns raised by the Opposition in relation to the provision of date-of-birth information on delivery dockets and invoices. The Government's response to those concerns is to undertake not to commence the relevant provision, which is proposed section 128 (3) (b). I understand that the Opposition, following discussion with officers and me, have agreed to that course of action. More generally, we will move a series of amendments in Committee, and with a bit of luck, we might be able to deal expeditiously with the other matters. I commend the bill to the House.

Motion agreed to.

Bill read a second time and committed.

Progress reported from Committee and leave granted to sit again.

GAMING MACHINE TAX BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.20 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 bill before the House enables the transfer of responsibility for the collection of hotel and club gaming machine tax from the Liquor Administration Board in the Gaming and Racing portfolio to the Office of State Revenue in the portfolio of the Treasurer. The bill consolidates current legislation relating to gaming machine tax. The bill is similar in purpose to the Betting Tax Bill 2001.

As background to the legislative amendments proposed by this bill, I indicate to the House that on 30 April 1998 the Government issued a licence to TAB Limited—the former Totalizator Agency Board—to centrally monitor all club and hotel gaming machines in New South Wales for taxation purposes. It is anticipated that the Centralised Monitoring System [CMS], being developed as a result of this licence, will be fully functional in the second half of 2001. Once established, the CMS will greatly simplify the process of assessment of data, and calculation of tax payable, for each gaming machine operating in New South Wales clubs and hotels.

In 1999, the Government determined that agency responsibility for collection of racing and gaming industry taxation revenue be transferred from the Liquor Administration Board to the Office of State Revenue. The changes implemented by the Gaming Machine Tax Bill will enable the Office of State Revenue to have formal responsibility for revenue collection, penalties for late payment and arrangements for deferral of payment of gaming machine tax. In a related initiative the bill will give TAB Limited the responsibility of calculating gaming machine tax payable. TAB Limited will perform this function under licence to the Department of Gaming and Racing.

The Liquor Administration Board will continue to have responsibility for the recalculation of returns and will also retain responsibility for revocation of gaming machine entitlements for failure to pay taxes due. These are regulatory and compliance matters. This measure accentuates what the Department of Gaming and Racing is about. It should be noted that this bill does not make substantial policy changes to gaming machine tax provisions, which people at present are eagerly awaiting; rather it makes machinery amendments to reflect the new location of functions and responsibilities within the Government. Further, this bill consolidates the gaming tax provisions currently detailed in two different Acts of Parliament and in regulations. This is similar to what was done with racing tax, which was dealt with by several bills introduced over various periods in history.

This bill takes a similar approach to the Betting Tax Bill, which will formally enable the Office of State Revenue to administer betting taxes. This is consistent with transfers of administrative responsibility to the Office of State Revenue for the collection of Keno duty and racing revenue, undertaken in July 2000 and January 2001 respectively. In short, the bill imposes a tax on profits from gaming machines in both registered clubs and hotels, makes provision for the lodgement of returns and prescribes the rate of tax payable. The prescribed tax rates are the same rates as currently apply. I re-emphasise that the bill is not about making policy changes; simply consolidating bills that presently exist.

Provisions to allow payment by instalment are also described in an identical way as currently operates. These represent policy neutral changes. The provisions relating to the Community Development and Support Expenditure Scheme are also taken from the Registered Clubs Act and inserted into the Gaming Machine Tax Bill, again without change to their substance. Provisions related to the lodgement of returns reflect the role of TAB Limited as the CMS Licensee. The proposed Act is to be read together with the *Taxation Administration Act 1996*, in relation to the provisions for the administration and enforcement of State taxation laws.

The bill makes consequential amendments to the Liquor Act, the Registered Clubs Act and the Taxation Administration Act. All duty provisions are to be repealed from the Liquor and Registered Clubs Acts. For consistency, the Taxation Administration Act is amended to include the Gaming Machine Tax Act as a "taxation law". The bill also enables savings and transitional provisions to be introduced by regulation. The bill progresses the Government's commitment that the calculation and collection of tax derived from gaming machines in New South Wales will be undertaken by appropriate agencies for an efficiently and effectively run gaming machine tax system. I commend the bill to the House.

The Hon. GREG PEARCE [3.20 p.m.]: I lead for the Coalition on this bill and indicate that the Coalition will not oppose the bill. However, this is yet another make-work bill introduced by the Government, which has no program and no plan. The Minister in his second reading speech in the other place indicated that the bill enables the transfer of responsibility for the collection of hotel and club gaming machine tax from the gaming and racing portfolio to the Treasury portfolio. He said this was similar to other legislation relating to racing taxation.

This bill is further evidence of the Government's commitment to revenue collection from gaming activities and liquor rather than social responsibility for compliance, monitoring and enforcement in that regard, and dealing with the consequences of problem gambling. The bill continues this Government's agenda of destroying the Department of Gaming and Racing in New South Wales. It is an indication of the paralysis and arrogance of the Government that, at a time when the community is concerned about major social and security issues, it comes forward with nothing but essentially machinery legislation.

The Minister's second reading speech was, of course, responded to by the shadow Minister, who again raised some of the critical issues relating to gaming reform and gaming legislation in this State. One particular concern raised by the shadow Minister is the continued delay in the provision of appropriate gaming data, which should be released to the public because it is critical to ensure that the public is informed about the state of gaming and revenue collection in New South Wales. The central monitoring system, which formed part of the licence to TAB Ltd, was supposed to have commenced on 1 January this year. Its introduction was postponed to the middle of the year and has been postponed again to 21 January 2001.

It is absolutely essential that the Government acts quickly to resolve confusion about who is in control of the central monitoring system and ensures that there is transparency and accountability in respect of gaming reform and the introduction of new technologies. The shadow Minister also referred to the value of information that will come out of the central monitoring system in regard to input into counselling, treatment, research and development of policies that is important to critical aspects of future gaming policies. As I said, this information is absolutely essential to meaningful reform of the gaming industry in this State.

The trouble with this bill is that it goes to the core of the disease that the Carr Government suffers from in relation to gaming in this State, and the epidemic that is now engulfing the people of New South Wales as a result of the Government's addiction to gaming revenues. The Government has presided over the most disturbing growth in poker machine numbers seen anywhere in the world. In late July we finally saw a response from the Treasurer and from the Minister for Gaming and Racing. They finally listened to the concerns of the community about the increase in the number of poker machines from 62,000-odd when the Carr Government came to office to more than 100,000 throughout clubs, hotels and shopfronts across the State.

The Treasurer and the Minister for Gaming and Racing finally took some account of the Productivity Commission's report on the devastating result of this explosion in poker machine numbers, and the endemic problem for the 293,000 people in Australia that the Productivity Commission identified as problem gamblers. That means that in New South Wales approximately 110,000 people who have been categorised as problem gamblers are doing untold damage to their families, friends and workmates. The Government's response to the report was to introduce a cap of 104,000 poker machines. Give or take one, that means that for the 110,000 problem gamblers identified by the Productivity Commission the cap will give them access to one poker machine each. That is shocking and horrifying, but it is totally consistent with the Government's addiction to the \$1.5 billion in revenue that it receives from taxes on gaming.

Honourable members should contrast the Government's allocation of a miserable \$3 million for research into problem gambling with the \$1.5 billion it receives from gaming profits. The Government's so-

called package did not include the introduction or establishment of an independent gaming authority to regulate gaming in New South Wales. The Opposition has, on a number of occasions, called for the establishment of an independent gaming authority to regulate gaming in this State. Once again, the Government has ignored the opportunity to establish such an authority, notwithstanding the fact that the Treasurer admitted that the existing regulatory structure had been subject to criticism, and warranted criticism.

The nexus between gambling revenue and this Government's approach to the issue of gambling is of concern to every person in this State. The Government has been derelict in its duty to the people of New South Wales by failing to properly regulate gambling and by failing to properly appreciate and address the social consequences of this unparalleled access to addictive gambling. The Opposition has no quibble with Treasury collecting the revenue. However, that has been accompanied by a gutting of the Department of Gaming and Racing and a reduction in responsibility for attention to the compliance, monitoring and enforcement aspects that ought to be priorities that go with the Government's policy of encouraging such gambling.

The true facts relating to gambling are terrifying. I have already referred to the probably accidental nexus between the cap of 104,000 poker machines that has been inflicted on this State and the 110,000 problem gamblers identified by the Productivity Commission. As usual in respect of the introduction of any package with which the Treasurer is involved, there was some additional tricky manipulation of the figures. The Treasurer should be ashamed of himself for attempting to disguise the figures on gambling when announcing the cap. The Treasurer, Tricky Micky, tried to cloud the issue by claiming that New South Wales was below the national average in relation to its proportion of revenue derived from gaming machines. The Treasurer said:

They contribute 6.2 per cent of our tax revenue. In Victoria it is 9.6.

That is the Treasurer's justification for it. What an appalling statement! Australian gambling statistics outline what is really happening. They reveal that New South Wales residents, the nation's greatest gamblers, lost a massive \$3.247 billion on poker machines in the 12 months to June 1999—an average of \$1,139 per person in 1999-2000. Those are the real figures. The Treasurer should not attempt to disguise the problem with rather silly commentaries about comparable gambling revenue percentages in various States. Make no mistake about it: in New South Wales revenue collection from liquor and gaming is the Government's priority. Compliance, monitoring, enforcement and the social fallout from the gaming epidemic are of no concern to this Government.

The Opposition is concerned about the Government's failure to ensure the release of gaming data to inform the public and to allow for proper research and development of harm minimisation strategies. The legacy of the Carr Government will be its addiction to gambling and the crushing impact of the fallout from this epidemic of problem gambling. That has been exacerbated by the 104,000 poker machines put in place by this Government to ensure that we have 110,000 problem gamblers. Enough is enough. This bill does nothing to address the gambling epidemic unleashed by the Carr Government. The Opposition does not oppose the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: [3.32 p.m.]: The Australian Democrats believe this bill is yet another machinery bill that does nothing to address the issue of problem gambling. In the struggle against the tobacco industry governments did not want to lose the revenue gained from the sale of tobacco. Groups arguing for the tobacco industry and their apologists in the hotel industry basically said, "You are getting the money." Treasury officials said, "We have the money", but they did not really want to know about the health costs. They did not want to take into account the holistic view. Basically, Treasury opposed anything that took away the money in which it was interested. That was the story across the world. Governments were addicted to tobacco revenue.

Eleven per cent of this State's revenue is derived from gambling. This Government is becoming addicted to gambling revenue. State Treasury is now to collect that money. The Department of Gaming and Racing, which examines probity issues, has been downsized repeatedly. Being a club manager used to be lucrative as a lot of the gaming money was never recorded. People turned a blind eye to it. For a long time record-keeping technology was not as efficient as it could have been. Those running the clubs did not want their records to be checked and they purchased technology that did not keep comprehensive records.

It is now possible for machines to record the revenue that is being collected and to transfer that revenue to a centralised collecting point. In that way Treasury would not be defrauded as it would automatically receive comprehensive records of revenue collections. However, I understand that that technology is not yet ready. What a surprise! At a time when revenue collection is increasing I am worried about the fact that the Department of Gaming and Racing has been wound back. According to this bill that is the only issue to be considered. I hope that the Government at some future time—it certainly has not achieved this yet—will collect data about the revenue collected from poker machines.

If the proposed card system were standardised and mandated, we would be able to determine what individuals were losing. We could then conduct research into public health aspects, issue warnings to gamblers, inform clubs about problem gamblers and seek the intervention of clubs if patrons overspend. Those are the opportunities afforded to clubs as a result of this technology. At the moment that technology is being used to pay patrons more as an incentive to keep them playing. Outside the doors of gambling machine areas or casinos one always finds automatic teller machines [ATMs]. Club patrons withdrawing money from ATMs in those locations often do not realise—and there is no check on this system—that they cannot afford to gamble.

The Government, which wants to implement new revenue-collecting technology, should have mandated—or it should mandate at some future date—a standardised system for the collection of gambling revenue. The Government should have established how much social harm gambling has done and what can be done about it. No such luck! This Government simply does not want to know these things. It does not want to inconvenience the gambling industry. Where does the Government get its figures from? Presumably the idea of this legislation is to reduce collection costs. That is the limit of this Government's thinking.

Gambling addicts are being hung out to dry while the Government consolidates and makes its revenue collection cheaper. The Casino Community Benefit Fund does not in any way address the issue of problem gamblers. We have yet to see in this House any evidence-based legislation. No-one has said, "This is the research that has been done. This is what could be done. This is what will be done. This is our future direction. This is our philosophy." All of that has simply disappeared and we have before us machinery legislation that will enable the Government to collect gambling revenue. As I said earlier, this is a case of another missed opportunity.

We recently debated liquor and registered clubs legislation and today we are debating the Gaming Machine Tax Bill, which simply does not address a major problem being faced by New South Wales citizens. This bill in no way assists those who are dealing with problem gambling and it does not address the social, economic and legal consequences of gambling in this State. It is disappointing that, once again, this Government has completely missed the point. It has made no effort to address problem gambling in New South Wales, even though we are presently debating the Gaming Machine Tax Bill. I notice that the euphemism "gaming" rather than "gambling" is now being used in legislation as well as everywhere else.

The Hon. IAN COHEN [3.38 p.m.]: The Greens, while supporting the Gaming Machine Tax Bill, are mindful of the comments made earlier by other speakers in this debate. The Greens are concerned about the fact that 11 per cent of this State's revenue is derived from gambling. Gambling, a major problem, is affecting the social fabric of the New South Wales community. Gambling has widespread implications. As with the Betting Tax Bill the collection of hotel and club gaming machine tax will be transferred from the Liquor Administration Board in the Department of Gaming and Racing to the Office of State Revenue. After the Independent Pricing and Regulatory Tribunal [IPART] reviewed gaming in New South Wales it stated that it would be desirable to separate revenue collection functions from the regulation of gaming and racing. This proposal was accepted by the Government, which handed over its revenue collection functions to the Office of State Revenue. The process was completed in January this year.

The bill does not make any substantial policy or tax changes. The tax rate is not increased. The bill simply makes machinery amendments to reflect the new location of functions and responsibilities to the Office of State Revenue. However, it is appropriate at every opportunity to refer to the huge problems caused by the Government's addiction to gambling tax income. We should not overlook the huge costs to the taxpayer, families and friends of problem gamblers and people reduced to misery because of the policies of the State Government. The issue has been debated many times in this House. However, the Greens are able to support this machinery bill.

Reverend the Hon. FRED NILE [3.42 p.m.]: 342 The Gaming Machine Tax Bill is a machinery bill. It neither decreases nor increases the activity of gambling. The Government is thorough and efficient in collecting taxes—in this case from gambling sources. The Christian Democratic Party has stated many times in debates in this House the danger associated with an increasing dependence by the State Government on income from gaming. I would rather call it gambling. The bill contains no provision for social and family impact statements relating to the increase in gambling activity. We have a bill on the notice paper to provide for family impact assessments and for a commission to assess the impact of gambling, liquor and other bills that affect the family and society. We always assess the impact of legislation on families.

I again put on the record that we can prove—I have shown this in previous debates—that for every tax dollar the Government receives from gaming activity it spends three dollars paying for the damage caused by

such activity. It has to deal with broken families and provide for youth and community services. Government departments have to spend money that offsets the income the Government gets in gambling tax revenue. So for every dollar the Government receives it is \$2 behind. I would expect an efficient and caring government to look more closely at the situation. The Government should get reports from departments showing how much money is being spent on staff, social workers and so on trying to deal with the damage caused by gambling. The other day Archbishop Pell spoke critically of the amount of gambling in this State. We know that minor forms of gambling go on in Catholic parishes. He was shocked at the situation in this State, though there is excessive gambling in Victoria as well.

I am also concerned that the bill may enable the Government to conceal some aspects of gambling. The Office of State Revenue is simply a revenue collecting office and it is not equipped to make assessments, family impact statements and so on. The Greens have stated that they are pleased that the two activities are being separated. What happens in our society should be transparent so that we know the impact that gambling is having on our State and on families.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.46 p.m.], in reply: I thank honourable members for their contributions to the debate. The measures in the bill make relevant legislative changes to reflect the future functions and responsibility for gaming machine tax as a consequence of the introduction of a centralised monitoring system [CMS] for the State's gaming machines. The approach taken in the bill is consistent with the Government's decision to transfer administrative responsibility for the collection of Keno duty, betting tax and racing revenue, as well as gaming machine duties to the Office of State Revenue. I foreshadow that minor amendments will be moved in Committee to ensure that the Government's commitment to transfer responsibility for the collection of hotel and club gaming machine tax from the Liquor Administration Board to the Office of State Revenue is effected in a manner that preserves the substantial policy-neutral nature of the changes being made to current gaming machine tax provisions. The measures will ensure that an efficient and effective approach is taken to the calculation and collection of gaming machine tax in New South Wales.

In relation to the comments of the Hon. Greg Pearce, the bill is about efficiency of revenue collection from gaming machines; not about the quantum of taxes or other issues. I am advised that the CMS will commence from 1 December this year. The Government has announced a significant range of gaming reforms, and they will be brought forward shortly. The reduction in resources for the Department of Gaming and Racing is a result of a number of factors including abolition of liquor fees in 1997 and a more strategic approach to gaming regulation. This approach includes adoption of harm minimisation strategies for both liquor and gaming. I thank honourable members for their contribution to this debate, and I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.48 p.m.], by leave: I move Government amendments Nos 1 to 6 in globo:

No. 1 Page 3, clause 3, line 4. Omit all words on that line. Insert instead:

- (c) the monetary value of the credits accumulated by a gaming machine player in the course of play that are redeemed by the award of a non-monetary prize, or
- (d) in the case of a gaming machine that is a part of an authorised linked gaming system operating under Part 12 of the *Liquor Act 1982* or under Part 12 of *Registered Clubs Act 1976C* the amount that is deducted from the gaming machine in order to build a prize for the authorised linked gaming system concerned.

No. 2 Page 5, clause 7. Insert after line 26:

- (3) A hotelier or registered club must:
 - (a) before the end of each such 21-day period, deposit the amount payable in a bank or financial institution, and
 - (b) make such arrangements with the Chief Commissioner as enable the Chief Commissioner to access or appropriate that amount (such as by way of direct debit from the account of the hotelier or registered club concerned).

Maximum penalty (subsection (3)): 20 penalty units.

No. 3 Page 6, clause 8, line 12. After "comply", insert "with".

No. 4 Page 7. Insert after line 28:

11 Apportionment of liability for tax in certain circumstances

- (1) The Chief Commissioner may, in such manner as the Chief Commissioner considers appropriate:
 - (a) apportion the liability for tax as between hoteliers:
 - (i) in any case where there has been a change in the ownership of a hotelier's licence, or
 - (ii) in such other circumstances as the Chief Commissioner considers appropriate, and
 - (b) apportion the liability for tax as between registered clubs:
 - (i) in the event of an amalgamation of a registered club under the *Registered Clubs Act 1976*, or
 - (ii) in such other circumstances as the Chief Commissioner considers appropriate.
- (2) Subsection (1) (a) does not affect the operation of section 7 (3).

No. 5 Page 12. Insert before line 1:

Part 5 Exemption from or deferral of tax

Division 1 Hardship Review Board

17 Waiver, deferral and writing off of tax in hardship cases

The Hardship Review Board constituted under Division 5 of Part 10 of the *Taxation Administration Act 1996* may exercise its functions in relation to tax payable under this Act.

Division 2 Exemption from tax liability of certain registered clubs

18 Constitution of Committee

- (1) There is to be a Committee for the purposes of this Division comprising the following members:
 - (a) the Auditor-General (or a senior officer of the Auditor-General's Office appointed by the Auditor-General),
 - (b) the Secretary of the Treasury (or a senior officer of the Treasury appointed by the Secretary),
 - (c) the Director-General of the Department of Gaming and Racing (or a senior officer of the Department appointed by the Director-General),
 - (d) a person appointed by the Club Industry Advisory Council established by the Minister for Gaming and Racing.
- (2) If a person is not appointed for the purposes of subsection (1) (d), the Minister for Gaming and Racing may appoint a person to be a member of the Committee for the purposes of that paragraph.
- (3) A member of the Committee may appoint a person to act in the place of that member at meetings of the Committee.
- (4) Each member of the Committee has a deliberative vote and, in the event of an equality of votes, the member referred to in subsection (1) (a) has a second or casting vote.
- (5) The procedure for the calling of meetings of the Committee and the conduct of business at those meetings is to be determined by the Committee.
- (6) The Committee is a continuation of the Committee constituted under Division 3 of Part 4 of the *Registered Clubs Regulation 1996* immediately before the commencement of this section.

19 Exemption from tax liability in certain cases of hardship

- (1) The Committee may, by order in writing, exempt a registered club from its liability to pay the whole or part of an instalment of tax if the Committee is satisfied that:
 - (a) a casino was in operation (under the *Casino Control Act 1992*) during the whole or part of the instalment period concerned, and
 - (b) the whole or any part of that casino was within 10 kilometres of any part of the premises of the registered club, and

- (c) the club first became registered under the *Registered Clubs Act 1976* before 23 April 1993, and
 - (d) the club is suffering serious financial hardship as a result of a reduction in the profits from poker machines kept by the club during that instalment period, and
 - (e) the reduction in profits is reasonably attributable to the availability of poker machines in the casino during that instalment period, and
 - (f) the exemption is necessary to alleviate or assist in the alleviation of that hardship.
- (2) The Chief Commissioner is to be notified of, and is to give effect to, any order by the Committee under this section.
 - (3) Notice of the order is also to be given to the registered club to which the order relates.

20 Application for exemption

- (1) An exemption under this Division may be granted on application by the registered club concerned.
- (2) An application (and any exemption granted on the application) can relate to one instalment of tax only. Further applications in respect of an instalment period can be made.
- (3) An application must be in writing and be accompanied by:
 - (a) a copy of the income and expenditure statement and balance sheet for the registered club in respect of the 3 financial years immediately preceding the application, and
 - (b) such other information and documentation as the Committee may request, being information and documentation that it reasonably requires to determine the application.
- (4) The Committee may require an application and the details and information accompanying an application to be verified by statutory declaration.

21 Effect of previous refusal by Hardship Review Board

The Committee cannot grant an exemption under this Division in respect of the liability of a registered club to pay an instalment of tax if:

- (a) the registered club has made an application to the Hardship Review Board for that Board to waive, defer or write off the tax concerned, and
- (b) the Hardship Review Board has refused the application.

No. 6 Page 12, clause 19, lines 19 to 23. Omit all words on those lines.

The first main amendment will insert new provisions to enable the Hardship Review Board, constituted under section 106A of the Taxation Administration Act 1996, to operate in respect of gaming machine tax payable by registered clubs and hotels. The existing hardship provisions allowing the granting of exemption from gaming machine duty in certain cases of hardship currently detailed in the Liquor and Registered Clubs Regulations will be omitted as a consequence of the Gaming Machine Tax Bill 2001.

The intention of the amendment is to enable established hardship provisions under the Taxation Administration Act to be extended to clubs and hotels in relation to their obligation to pay gaming machine tax to the Office of State Revenue. The second main amendment will insert into the bill provisions that mirror the relevant elements of the existing exemption granting powers of the casino safety net committee as set out in the Registered Clubs Regulation. This amendment will simply ensure that the current specific exemptions available to clubs within a 10 kilometre radius of the casino will be carried forward as part of the new gaming machine tax arrangements.

The third main amendment will insert new provisions into the bill that preserve current arrangements for payment of gaming tax, as set out in the Liquor and Registered Clubs Regulations. The new provisions will ensure that clubs and hotels continue to deposit in a bank or financial institution tax amounts payable and that they make arrangements for the chief commissioner to access those monies by means such as direct debit from the account of the hotel or club.

Another two amendments will insert provisions, first, to ensure that all relevant definitional provisions relating to gaming machine outgoings are brought together into the one legislative location and, second, to enable the Chief Commissioner of State Revenue, rather than as in the past the Liquor Administration Board, to apportion liability for tax between hoteliers or between registered clubs in circumstances considered appropriate by the chief commissioner. I commend the Government's series of amendments.

The Hon. GREG PEARCE [3.51 p.m.]: The Opposition does not oppose this set of miscellaneous and other amendments to the bill.

Amendments agreed to.

Parts 1 and 2 as amended agreed to.

Parts 3 and 4 agreed to.

Part 5 as amended agreed to

Schedules 1 to 5 agreed to.

Title agreed to.

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

LIQUOR AND REGISTERED CLUBS LEGISLATION AMENDMENT BILL

In Committee

Consideration resumed from an earlier hour.

Clauses 1 to 4 agreed to.

Schedule 1

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.54 p.m.], by leave: I move Government amendments Nos 1 to 7 in globo:

- No. 1 Page 6, schedule 1 [12], line 21. Insert "unless the prospective purchaser has previously supplied his or her date of birth to the licensee," after "years,".
- No. 2 Page 6, schedule 1 [12], line 27. Omit "only to".
- No. 3 Page 6, schedule 1 [12], line 28. Insert "to" before "the adult".
- No. 4 Page 6, schedule 1 [12], line 29. Insert "to" before "another".
- No. 5 Page 6, schedule 1 [12], line 31. Omit "order.". Insert instead "order, or".
- No. 6 Page 6, schedule 1 [12]. Insert after line 31:
 - (iii) if the delivery is made on a day after the day the order is taken, or the sale made through an internet site, otherwise in accordance with the customer's instructions.
- No. 7 Page 8, schedule 1 [12]. Insert after line 14:
 - (11) This section does not apply to or in respect of the sale of liquor to a person who is authorised to sell liquor.

These amendments will address concerns raised by some in the liquor, courier and postal industries about provisions relating to remote liquor sales as set out in item [12] of schedule 1 to the bill. The provisions include new controls over remote sales of liquor; that is where liquor is sold through orders taken over the Internet or telephone or by facsimile or mail and then delivered to the customer by post or courier. The new controls are aimed at reducing access to liquor by minors using remote sales and home delivery. They will make it clear that it is an offence for liquor to be provided or delivered to minors in this way and will require licensees to take certain action to minimise the risk of that occurring.

The Government appreciates the concerns that were expressed about the provisions that would have applied to sales made between liquor licensees on a wholesale basis and the provisions that would have prevented liquor from being delivered to unattended premises. In particular, acknowledged are the difficulties that would be suffered by Australia Post or a courier being unable to deliver liquor to an unattended address and having to retain and secure the liquor at appropriate premises.

The Government's amendments will address those concerns by making it clear that liquor can be delivered in accordance with the instructions provided by the purchaser so long as it is not delivered on the same

day that the order was taken. That requirement will discourage minors ordering liquor that is to be delivered to an unattended address, as it is felt that in most cases minors would be looking to receive such an order as soon as possible. The Government's amendments will also ensure that a long-established practice of wine clubs, which often deliver wine to customers' homes or a next-door neighbour during the day while the purchaser is at work, can continue.

While it is recognised that the provisions of this amendment may not stop every possible home delivery order that could be made by a minor, it is felt that the next-day requirement combined with the other controls included in the bill, as I outlined in my speech in reply to the second reading debate, will help to reduce access to liquor by minors through home delivery. The Government's amendment will also exempt licensee sales—in other words, wholesale sales of liquor—from the new requirements. This will address the concerns expressed by liquor wholesalers.

The Government has not removed the requirement for purchasers to provide a date of birth when ordering liquor by the telephone, mail, facsimile or Internet. This requirement will remain as a disincentive when minors attempt to purchase liquor using remote means. However, the amendments will remove the requirement that date of birth information be provided by a purchaser when the purchaser has previously supplied that information to the licensee. This will avoid duplication and will ensure that licensees will be able to keep a record of this information so that it can be included on invoices or delivery dockets. I commend the amendments.

The Hon. GREG PEARCE [3.57 p.m.]: The Opposition raised a number of these issues and drafted some proposed amendments to the bill to remove some of the harsh and unreasonable requirements, particularly in relation to the delivery of mail order and Internet liquor. The Opposition recognises the importance of legitimate and convenient industry utilisation of home delivery and remote ordering through the Internet and other avenues. The Opposition will not move its proposed amendments, because the Government has now adopted a number of them and has included a number of other machinery amendments that will ensure that our concerns and those of the industries involved are met.

The Opposition notes that the Government has given a commitment that it will not proclaim section 128 (3) (b). In not moving amendments, the Opposition is reliant on the Government's commitment to do so in order to effect our proposed amendments.

Amendments agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Title agreed to.

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

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

COMMISSION OF INQUIRY INTO WORKERS COMPENSATION COMMON LAW MATTERS

The Hon. MICHAEL GALLACHER: I direct my question to the Minister for Industrial Relations. Will the Minister give an undertaking to the House to consult with all peak workers compensation stakeholders prior to taking any Sheahan inquiry reform recommendations to Cabinet?

The Hon. JOHN DELLA BOSCA: I thank the Leader of the Opposition for the question, although I am uncertain as to the point of it. I believe he is aware that the occupational health and safety workers compensation advisory council has held two meetings since the outcome of the Sheahan inquiry has been made known. The council has had a chance to examine the findings of Mr Justice Sheahan and has had the

opportunity to provide me, as Minister, and the general manager of WorkCover with some preliminary views resulting from that review. As the Leader of the Opposition and many other members will be aware, that body comprises representatives of what might be broadly termed all workers compensation stakeholders. The primary stakeholders are the employees and employers, and their various organisations are adequately represented on the advisory council. Also adequately represented on the advisory council are the other groups, which provide services within the occupational health and safety and workers compensation system. Those other groups include lawyers, medical practitioners, ancillary medical and clinical practitioners and a range of people who reflect the opinions of the insurance industry and so on. That level of consultation is taking place both informally and formally.

The Leader of the Opposition knows that it is customary for Ministers not to speculate about exactly when matters will be brought to Cabinet. I assure him that consultation is already occurring and the matter has not yet gone before Cabinet. I am having informal discussions with a wide variety of stakeholders, key stakeholders and those representing service providers, which clearly comes under the category of "detailed consultation". As I have said, although the findings of Mr Justice Sheahan take an unusual, novel or different approach from that envisaged originally by the Government, I have been pleasantly surprised by the degree of acceptance. The Government must consider seriously and urgently the reforms canvassed by Mr Justice Sheahan.

GOODS AND SERVICES TAX

The Hon. IAN MACDONALD: My question is addressed to the Treasurer, and Minister for State Development. Will the Treasurer advise the House when Prime Minister Howard's goods and services tax [GST] will start delivering extra money to New South Wales for schools, hospitals and other services?

The Hon. MICHAEL EGAN: That is an excellent question and I commend the Hon. Ian Macdonald for asking it. The short answer is not until 2007. In other words, not after this election or the next election but after the next Federal election—three Federal elections down the track. By that stage John Howard will have retired as Liberal Party leader, Peter Costello will no doubt have been given a go and failed, Tony Abbott will have had his chance and failed, and Bronwyn Bishop will be the leader of the Liberal-National Coalition in Canberra. That is how long it will take for New South Wales—and indeed Victoria—to be a net beneficiary of Mr Howard's and Mr Costello's GST.

I almost fell off my chair on Sunday night. What a great night it was! I had a great time watching the debate and seeing, on the one hand, a Labor leader displaying with vision and resourcefulness policies and plans beyond 2001 and, on the other hand, the gutless, weak and pathetic performance of a Prime Minister without any policies or plans. He was asked what he would do to help our hospitals and schools and he replied that the GST would fix them. Where did the worm go? The worm turned and buried itself in the ground. We will remind the Prime Minister of that comment over the next four weeks. Day in, day out, we will remind him and the people of Australia that the Liberal and National parties' solution to the problem of education and hospitals is the GST. That is the only solution they have.

As I pointed out, Mr Howard knows that it will be years and years and years before any State gets extra money from the GST. He knows that New South Wales will not benefit until 2007. In the meantime, New South Wales taxpayers are paying up to 36 per cent of the nation's GST revenue. Guess how much John Howard gives back to us? He gives us only 30 per cent compared with the 36 per cent that we contribute. When I say that New South Wales will not benefit until 2007, I do not expect Opposition members, crossbenchers or even my own staff to take my word for it. I have documentary proof. The document is entitled "Heads of Treasuries Report to the Ministerial Council for Commonwealth-State Financial Relations: Estimated Payout to States and Territories." What does it say? It reveals that there will be not one extra cent for New South Wales schools or hospitals under the GST until 2007. I will table the document if honourable members want me to do so. I attended the meeting of Commonwealth and State Treasurers that endorsed the document. Peter Costello put his stamp of approval on this document, which proves that New South Wales will not get one extra cent from the GST until 2007-08. Not only was Mr Howard pathetic and stupid on Sunday night in trying to make this absurd point, but he was deliberately misleading and deceptive. The centrepiece of his performance on Sunday night was this big lie. [*Time expired.*]

The Hon. IAN MACDONALD: I ask a supplementary question. Will the Treasurer outline clearly when it clicks in? Does it click in in 2007 or will we suffer a lot over the next three or four years?

The Hon. MICHAEL EGAN: That is a good supplementary question. It does not click in in 2001 or 2002—

The Hon. Duncan Gay: Point of order: Madam President, I ask that you rule that supplementary question out of order. It is certainly outside the standing orders governing supplementary questions. It is seeking information about something called "it". Even someone as erudite and bright as the Treasurer cannot give accurate information about "it" to the House.

The PRESIDENT: Order! The question was in order insofar as it was seeking to elucidate a previous answer. However, that part of it that was debated is out of order. The Treasurer can answer that part of the question that asked for elucidation.

The Hon. MICHAEL EGAN: I can assure the House that it will not click in in 2001; it will not click in in 2002, 2003, 2004, 2005 or 2006. It might click in in 2007, by which time most of the kids now in our schools will have left! One would not want to be waiting to get into a hospital until 2007! What Mr Howard is saying to all New South Wales children is to have a six-year holiday and come back in 2007 and then we might have more Commonwealth funds. He is telling people around Australia to wait until 2007. What a pathetic response from a Prime Minister who seeks a mandate this coming election for the next three years until 2004! He is coming up with a solution that he tells us will benefit us in 2007!

Of course, we know what Mr Howard's promises are like because we signed the Medicare agreement. I am sure the House remembers the Medicare agreement. That Medicare agreement contained a provision that when there was a dispute between the Commonwealth and the States about the escalation factor an independent arbiter would be appointed. Well, guess who was the independent arbiter! It was the Prime Minister's own staff and what did they do with the report? They tore it up! They tear up every promise they make to the people of New South Wales. It is one of the most disgraceful things I have ever seen! [*Time expired.*]

GOODS AND SERVICES TAX

The Hon. JAMES SAMIOS: Now that the Treasurer and Vice-President of the Executive Council has claimed that no State will benefit from the GST until 2007, can he confirm that under Federal-State taxation arrangements the States are guaranteed a minimum revenue from the GST and, therefore, will not get any less than they did pre-GST? Is it not then a fact that the Treasurer has been misleading the public in his recent statements about GST revenue to the States?

The Hon. MICHAEL EGAN: Talk about putting his foot in it! The honourable member has asked me to confirm that States will not get any less revenue. I have conceded that all along. I have pointed out time and again that because the revenue we are giving up under the requirement of the Commonwealth Government is less than the revenue we get from the GST, the Commonwealth Government will be picking us up to make sure that we are not worse off. But that is not what the Prime Minister was saying on Sunday night. The Prime Minister clearly was telling the people of New South Wales that our schools and hospitals were benefiting now because they were getting extra money from the GST. All I have been pointing out is that not a single extra cent from the GST has been provided for schools and hospitals. I thank the Hon. James Samios for asking that question. He is an honest and good man. Even if the question embarrasses his own side, he will ask it because he wants the truth and justice. Thank you, you are a fine man!

KINGS CROSS MEDICALLY SUPERVISED INJECTING ROOM

The Hon. ELAINE NILE: I direct my question without notice to the Special Minister of State. Is it a fact that the original budget for the so-called Kings Cross medically supervised safe injecting room, also known by drug addicts as a shooting gallery, has doubled already to over \$4.2 million? How many drug rehabilitation beds would have been provided each year by this \$4.2 million? Will the Government give an assurance that the success of the injecting room will not simply be measured by the number of overdoses that occurred in it but also include any increase in the number of drug addicts? Will the Government give a progress report on the injecting room and its current budget situation? Has there been a further blow-out to the difficulties in securing adequate insurance coverage because of current terrorist threats?

The Hon. JOHN DELLA BOSCA: A cost estimate for the establishment and operation of the trial medically supervised injecting centre was not easy. There is no precedent in Australia or the world. As I have previously stated, New South Wales Health advises that the operating cost for the trial is an estimated \$4.3 million. This estimate covers the duration of the trial starting from the time the Sisters of Charity proposed themselves as an operator to the time the 18-month trial is completed. These operating funds have been provided from the Confiscated Proceeds of Crime Account, which are primarily the confiscated proceeds from drug

trafficking. The Drug Summit budget allocated an additional \$25.5 million over four years for programs to help families and young people, and \$112.9 million for health care and treatment. Therefore, the \$4.3 million represents quite a small fraction of additional funding that has been provided.

Original Drug Summit allocations remain unchanged. As I have repeatedly stated, the estimated operating costs of the medically supervised injecting centre trial have risen due to several factors, including the withdrawal of the Sisters of Charity, the subsequent difficulties in finding appropriate premises and the legal action initiated by the Kings Cross Chamber of Commerce. Salary costs represent approximately half the centre's operating costs. Under the centre's protocols, essential nursing staff must be present at all times and operate on a two-shift basis seven days a week. I should stress that the medically supervised injecting centre is a one-off trial. It is only one part of our evidence-based approach to drug policy and a committee of experts is evaluating the trial.

The evaluation will not be measured simply by the number of overdoses that occur inside the centre or by any conclusions that may be drawn from that. The evaluation will be based on the general amenity of the centre and indexes of the number of users who have been referred to and have participated in other treatments or have come into contact through the centre with other health resources that enable them to come to grips with or approach their drug problem. The evaluation, which is comprehensive, involving seven different aspects of the trial, is an additional non-operating cost. Funding is being provided to the Bureau of Crime Statistics and Research, the National Drug and Alcohol Research Centre, the National Centre for HIV Epidemiology and Clinical Research, and for health economics research.

The latest advice from New South Wales Health estimates that these four research institutions will be funded approximately \$488,000 in total to undertake their evaluation over approximately four years. The Government legislation, which permits the 18-month trial of the medically supervised injecting centre, recognises the dangers inherent in the practice of injecting drugs by providing protection from civil liability for people acting according to the law in connection with the conduct of the centre. For the purposes of the trial the Government has indemnified the Uniting Church against liability that the church might incur in operating the centre.

New South Wales Treasury advises that \$500,000 from the confiscated proceeds account has been provided as the cost of reinsurance for public liability claims in excess of \$2 million. This coverage extends for the life of the trial. In addition, I am advised by New South Wales Treasury that the Treasury Managed Fund has retained some \$2 million for primary public liability coverage as a contingency to provide indemnity for claims up to this amount. Approximately \$100,000 has been provided to cover workers compensation and property insurance. [*Time expired.*]

POST-OLYMPICS TRADE MISSIONS AND MARKET VISITS

The Hon. HENRY TSANG: My question without notice is to the Treasurer and Minister for State Development. Can the Minister inform the House of the benefits obtained by New South Wales trade missions and market visits in the post-Olympic Games period? What plans are there for further missions and visits?

The Hon. MICHAEL EGAN: As the Hon. Henry Tsang is well aware, international trade is a vital part of the New South Wales economy.

The Hon. Dr Brian Pezzutti: He is an adviser on eastern Asian business.

The Hon. MICHAEL EGAN: That is right, so he would be in a position to know. The value of goods and services exported by this State in the last financial year, that is 2000-01, was \$37.6 billion—representing a 19 per cent increase on the previous year. In the year since the staging of the Sydney Olympic Games trade performance by New South Wales and its companies has helped to produce Australia's highest annual increase in export growth for 21 years.

Increasingly, small and medium enterprises in New South Wales are answering the export call, growing their businesses and lifting employment to meet the demand for their products in international markets. An important part of the effort to build the State's global trade effort is the program of trade missions and market visits introduced by the New South Wales Government in its 2000-01 budget. Trade missions are organised for high potential and emerging markets covering a broad range of business and export sectors, whilst market visits are targeted at specific product or services sectors and cater mainly to smaller groups so that they can

comprehensively study market conditions and opportunities. The program of missions and visits is designed to bring first-time exporters and existing exporters into direct contact with agents, distributors and end users in high potential and emerging markets, whilst also giving them vital hands-on experience of customer needs and requirements.

During 2000-01 a total of 71 New South Wales companies have taken part in seven Government-organised or supported trade missions to Malaysia, Singapore, China, India, New Zealand, the United States and the United Arab Emirates. A further 18 companies participated in market visits to world markets. The 89 companies that took part in missions and visits made sales in excess of \$8.6 million while still on the ground overseas. In addition, the companies said that they anticipated major follow-up sales in the next 12 months as a direct result of their participation. Combined total sales and anticipated sales by companies on the missions and visits were expected to be worth more than \$85.8 million within 12 months. I am delighted to say that the Department of State and Regional Development is already working on trade missions and market visits for the months ahead. Trade missions are planned during the remainder of this year to Germany, North America—

The Hon. Dr Brian Pezzutti: Are you going?

The Hon. MICHAEL EGAN: No, unfortunately, I am not.

The Hon. Dr Brian Pezzutti: Why not?

The Hon. MICHAEL EGAN: I would like to go, but my responsibilities here are too onerous. However, I will, with the urging of the honourable member, try to reconsider whether I can join one of these missions this year. They are going to Germany, North America, the United Arab Emirates, Japan and Korea, with seven market visits scheduled that will involve building and construction, food and beverages, health care, environmental services, information technology and mining practices. There is now, and there will continue to be, a true partnership between the New South Wales Government and the State's exporters to expand our trade and investment opportunities. If I am able to rearrange my program to get away, I certainly will. Perhaps the Hon. Dr Brian Pezzutti might even join me to assist the Government in promoting exports for New South Wales.

BUILDING LICENCE REQUIREMENTS

Reverend the Hon. FRED NILE: I address my question without notice to the Minister for Mineral Resources, representing the Minister for Fair Trading. What are the requirements and qualifications to be met by applicants for building licences before they are granted a licence? Can the Government guarantee that all building licences issued to builders in this State are given to builders who are qualified? What proactive procedures are in place to hold builders accountable for their compliance with building codes? For what length of time are licences valid? Is licence renewal subject to a satisfactory performance assessment? How will the Government provide consumer protection and adequate compensation for families who have been ripped off by corrupt builders, especially for builders' poor workmanship?

The Hon. EDDIE OBEID: I will seek to get the honourable member a detailed answer from my colleague the Hon. John Watkins.

QUEENSLAND ELECTRICITY INDUSTRY CONTESTABILITY

The Hon. DUNCAN GAY: My question is to the Treasurer. Does he agree with the decision of the Queensland Premier, Peter Beattie, to defer the implementation of full retail contestability for electricity customers? Did Queensland consult with his Government before halting the transition to a competitive market? What impact will the decision have on the New South Wales State-owned electricity retailers who now face competition from Queensland retailers, but who will be unable to compete for household customers in Queensland?

The Hon. MICHAEL EGAN: The question is in three parts. The answer to the first part is no, I do not agree with the decision of the Queensland Government. In relation to the second part of the question, whether we were consulted or informed, to the best of my recollection we were not. Certainly I was not aware of any approach by the Queensland Government. In relation to the third part of the question, there would be some disadvantage not only for New South Wales retailers but also other retailers in Australia that are based in States where—

The Hon. Duncan Gay: It is a pretty ordinary decision.

The Hon. MICHAEL EGAN: It is a very ordinary decision. I thank the honourable member for his support.

CeBIT AUSTRALIA TRADE FAIR

The Hon. AMANDA FAZIO: My question without notice is to the Minister for State Development. Will the Minister update the House on Sydney's latest success in attracting major events?

The Hon. Michael Gallacher: The showcase?

The Hon. MICHAEL EGAN: No, major events. The honourable member has no idea what the Australian Technology Showcase is all about. Have I not given the House sufficient information about it? He has not learned a single thing. I am able to advise the House that a decision was made by Deutsche Messe AG to hold its annual CeBIT information and communications technology [ICT] trade fair in Sydney for the next five years. Deutsche Messe organises more than 50 international events, with CeBIT Australia being organised by its Australian subsidiary, Hannover Affairs. The long-term commitment to host this event in Sydney confirms our city's post-Olympic status as an attractive international business tourism location and as an international centre of ICT excellence.

Sydney is the largest market for high-technology products in Australia, and most of our top ICT companies are, as one would expect, based here. CeBIT Australia will be held in Sydney each year from 2002 to 2006 and will feature the Australian Information Industry Association Software Showcase, not to be confused with the Australian Technology Showcase. The Australian Information Industry Association Software Showcase was previously held as a stand-alone event. This latest win will see New South Wales increase its share of the \$2.2 billion conventions and meetings market. The more than 7,000 participants at the May 2001 ICT exhibition at Darling Harbour, the first with CeBIT involvement, included corporate representation from nine countries as well as Australia and national business delegations from India, Taiwan, Germany, the United States, Japan and the United Kingdom.

Eight New South Wales-based innovative companies, members of the Australian Technology Showcase [ATS], attended the trade fair as part of the Department of State and Regional Development stand. Technology promoted by these companies at the fair ranged from e-commerce software and security firewalls to voice-logging recorders and remote digital monitoring and telemetry. I do not know what telemetry is, but I am sure the Hon. John Della Bosca will be able to advise us when I finish my answer. The ATS companies reported gaining more than 300 quality leads to follow up, and anticipated future sales worth several million dollars as a direct result of their participation in the trade fair. The first CeBIT Australia event is scheduled for 28 to 30 May 2002. Honourable members should note that in their diaries. I congratulate Deutsche Messe AG on its decision to hold the CeBIT trade fair in Sydney. I wish the participants every success in the future.

GOODS AND SERVICES TAX

The Hon. DAVID OLDFIELD: My question is to the Treasurer. Has this Government been involved in or attempted to be involved in any discussions with the Federal Opposition to lower the current rate of 10 per cent GST? Has this Government been involved in or attempted to be involved in any discussions with the Federal Opposition to remove GST from any goods or services on which that tax is currently imposed? Has this Government been involved in or attempted to be involved in any discussions with the Federal Opposition to abolish the GST and/or replace GST revenue with other tax alternatives?

The Hon. MICHAEL EGAN: Might I begin by congratulating the Hon. David Oldfield on his recent marriage. It is not my intention to deliver Mr Beazley's policy statement in this Chamber today. That will be done very eloquently and very capably by Mr Beazley at a later date before the election. What I can tell the honourable member is that under the Beazley Labor Government the goods and services tax [GST] burden will be lower and under the Howard-Costello-Abbott-Bishop Coalition the GST burden will be higher. I do not know how much higher Mr Howard, Mr Costello, Mr Abbott and Mrs Bishop will push up the GST, but I suspect that their promise that it will not go beyond 10 per cent is just the same as their promises on Medicare and just like their promises on a never-ever GST.

[Interruption]

What mugs they are, because under current legislation we—that is, all of the States—only have to approve. It is not a constitutional position. That legislation can be changed by a Liberal-National Party-Democrat controlled Senate. Where is GST Chesterfield-Evans? Where is he? It will be the Democrats again. If by some mischance Howard and Costello are re-elected, there will be a dirty little deal between Howard and Costello and Senator Natasha Stott Despoja, because she is not going to get many votes at this election. They will do a deal to increase the GST and the States will have no say in it. Like all of their promises, it will be broken. But I can tell you that under a Beazley Labor government, the burden of the GST will be reduced.

HIGHER SCHOOL CERTIFICATE STUDENT APPEALS

The Hon. PATRICIA FORSYTHE: My question without notice is to the Special Minister of State, representing the Minister for Education and Training. Is the Government aware that in response to concerns raised about the timing of changes to the Higher School Certificate [HSC] the Commissioner for Children and Young People has indicated a willingness to raise the issue with the Minister "to ensure ... a better process for introducing new curriculum, text-books and teaching material"? In view of this statement by the commissioner, will the Government call on the Board of Studies to accept appeals from students who feel aggrieved because of the inadequacy of teaching resources and textbooks for some of the new curriculum?

The Hon. JOHN DELLA BOSCA: The honourable member has asked an excellent question involving a detailed quote and public speculation about what someone said about someone else's portfolio. It would be a very good question if asked of the Minister for Education and Training. I am not in a position to give an answer but I undertake to obtain an answer from the Minister as soon as practicable. I was more interested in what the recent television debate revealed about education and the GST, that is, that the entire solution to the problems of education in Australia is to be found in the GST. I think that probably says it all.

FUTURE FARMERS TRAINING PROGRAM

The Hon. TONY KELLY: My question is to the Special Minister of State, and Minister for Industrial Relations. Will the Minister tell the House what action the Government is taking to address the high percentage of workplace injuries that are occurring to young rural workers.

The Hon. JOHN DELLA BOSCA: I thank the honourable member for the fact that he has expressed a great and consistent interest in the welfare of country people, especially young rural workers. The high numbers of young people injured in the rural industry is of concern to the community and to this Government, which is taking steps to address the problem. Between 1990 and 2000, 930 young people aged between 13 and 25 were injured in accidents in the rural industry. The majority of these injuries occurred while these young people were working in the areas of grain, sheep, and beef and cattle.

Honourable members may be aware that I launched Future Farmers, a training program to educate country students on the importance of farm safety. Future Farmers was lodged at Livingston Farm, in Moree, in August. The program is the result of collaboration by WorkCover New South Wales, Farmsafe New South Wales, the Rural Industry Reference Group, the Australian Centre for Agricultural Health and Safety, farm safety action groups and rural high schools. Thirteen regional farm safety action groups will implement the program throughout the State. The program includes a rural health and safety resource for high school students, which comprises 12 training modules on farm hazards, aimed at rural students in years 9 and 10. The modules address occupational health and safety responsibilities of people on farms, and covers issues relating to the safe use of tractors, farm motorcycles, firearms and chemicals.

The Hon. Duncan Gay: What about your brochure, the WorkCover one showing the tractor without a roll bar?

The Hon. JOHN DELLA BOSCA: I thought the honourable member asked whether I had mentioned Russia yet. I thought he must have been really drifting instead of listening to this very important answer about rural safety and young people. Other modules address occupational health and safety risks relating to manual handling, noise, workshop safety, working with cattle and horses, and on-farm emergency response systems. The modules include activities for students, instructor guidelines and follow-up materials, with eight modules selected for presentation at a field day.

Patron of the Future Farmers initiative is Heath Francis, one of Australia's leading paralympians. Heath sustained severe injuries as a result of an accident on his family's property, and is sponsored by WorkCover

New South Wales. Heath won three gold medals and one silver medal at the 2000 Paralympic Games in Sydney. At the first field day held at Moree, Heath told the audience that the program is an important initiative, as working on farms can be very hazardous, particularly for young people. The rural health and safety resource will assist in reducing accidents through educating young people about to start work in rural industries

LUCAS HEIGHTS NUCLEAR REACTOR EMERGENCY RESPONSE PLANS

Ms LEE RHIANNON: I direct my question to the Treasurer, representing the Premier. In light of the events of 11 September in New York, has the New South Wales Government reassessed emergency response plans to take into account the possibility of a passenger jet crash attack on Lucas Heights? Is the Government aware that the United States of America Federal Aviation Administration has warned civilian pilots to avoid the airspace above or in proximity to nuclear power plants, and that the United States of America Air Force has been instructed to intercept, and as a last resort shoot down, planes that violate the zones? Can the Government guarantee that all firefighters, police, State Emergency Services personnel and ambulance officers would have access to radiation suits in the event of the jet crash attack on Lucas Heights?

The Hon. MICHAEL EGAN: As indicated at a meeting of crossbenchers today, generally it is my intention not to answer security questions off the top of my head during question time. If honourable members have genuine questions I would invite them to either raise them with the Government privately or place them on *Questions and Answers* and by that means they will obtain a considered answer. However, I do have to hand some information in relation to the Lucas Heights facility which I will provide to the House. As honourable members would be aware, the nuclear reactor at Lucas Heights, which is near Sutherland, is a major Commonwealth facility. It is protected at all times by Commonwealth security arrangements and I am advised that this security is permanently at the maximum level available under Federal Government arrangements. In the event of a terrorist attack that breaches security at Lucas Heights, New South Wales will provide significant support under the arrangements put in place by the Standing Advisory Committee on Commonwealth-State Co-operation for Protection against Violence, which is otherwise known as SACPAV. I again indicate to the House that if honourable members have any questions about security I would appreciate it if they could be asked on notice.

PORT STEPHENS SNAPPER FARM

The Hon. JENNIFER GARDINER: My question is to the Minister for Fisheries. Is the Minister aware of concern among many residents of Port Stephens and further up the coast about the health of snapper at the snapper farm off Port Stephens and of the containment provisions for the snapper, especially in rough weather? Will the Minister advise what is being done by New South Wales Fisheries to allay any concern?

The Hon. EDDIE OBEID: The snapper farm at Port Stephens is probably the biggest aquaculture project in the State. It is hoped that in time it will produce twice as much as our wild catch of snapper, which presently is about 280 tonnes a year. The farm, Pisces Marine, will produce about 500 tonnes after the first couple of years and it is hoped that it will go on to produce 1,000 tonnes a year. The Department of Urban Affairs and Planning has assessed the farm over a lengthy period. It has passed all the required environmental assessments. To my knowledge there is nothing new. Only a short while ago my colleague the Hon. Andrew Refshauge handed the environmental assessment approvals and planning authorities to Pisces Marine. I was the first one to congratulate the farm operators. I wish them well.

I have no knowledge of any issue that would be of concern. However, if the details in the question require a further response to the House I will provide it. We should be very proud that there are serious investors who over a number of years have researched technology along with New South Wales Fisheries. We have encouraged the syndicate to pursue research for this major aquaculture project. It will do extremely well. It is the first project of its kind in this State. The snapper are grown in cages off the coast of Port Stephens. The farm has been meticulous in co-operating with New South Wales Fisheries. I look forward to bigger things. The syndicate has export contracts.

The Hon. Michael Egan: Do you prefer snapper to bream?

The Hon. EDDIE OBEID: The syndicate is growing snapper at the moment. If it succeeds there will be many other farms of the same nature.

The Hon. Michael Egan: But do you prefer snapper to bream? What should I buy?

The Hon. EDDIE OBEID: If you stick to snapper you will be doing well. New South Wales imports many tonnes of snapper, predominantly from New Zealand.

The Hon. Dr Brian Pezzutti: Why?

The Hon. EDDIE OBEID: We do not have sufficient wild catch. As I said earlier, we catch only 280 tonnes of snapper a year in the wild. This farm alone in its first production period will produce 500 tonnes. It already has export contracts. It is a credit to the organisation that it has put big money into a venture at this early stage. It has worked closely with the Government and will continue to do so. We will continue to support it. It is hoped that it will be able to replace stock that is presently imported to satisfy our markets.

FINANCE INDUSTRY WORKPLACE VIOLENCE

The Hon. JOHN HATZISTERGOS: My question is to the Special Minister of State, and Minister for Industrial Relations. What measures are being taken to assist employers and their employees in the finance sector to manage workplace violence?

The Hon. JOHN DELLA BOSCA: In 1999 the Government established 13 industry reference groups to work with industry to reduce the incidence and severity of work-related injuries and improve return to work rates for injured workers. Workplace violence has become a significant workplace health and safety issue. Over the last 10 years the incidence of business robberies has increased significantly. The Business Services Industry Reference Group has therefore developed a set of guidelines and checklists to assist small employers and their employees in managing workplace violence. The guidelines and checklists are primarily for small to medium businesses in the finance sector, specifically building societies, credit unions and regional banks. The material has been developed by people who have experienced the problems and who understand the needs of the sector. It is available on the WorkCover web site for easy access. Smaller institutions frequently do not have the same resources as the major banks but they play a significant role in communities, and obviously in the lives of those who work for them. Providing assistance to those organisations that supply necessary services to the citizens of New South Wales is an example of how the industry reference groups are filling the knowledge gaps and offering help where it is needed.

The Hon. Dr Brian Pezzutti: Is there a nurse on that group?

The Hon. JOHN DELLA BOSCA: I would not think there would be a nurse on the industry reference group for the finance industry. I will check. There would be nurses on the industry reference group for the health industry and the nursing home industry.

The Hon. Dr Brian Pezzutti: Is there one there?

The Hon. JOHN DELLA BOSCA: There would be. I will get that information for the honourable member if he would like it. This is another example of how the Government is harnessing the experience and understanding of industries to solve their own problems and reduce the cost of workers compensation in New South Wales.

POLICE DETECTIVE NUMBERS

The Hon. HELEN SHAM-HO: My question is directed to the Special Minister of State, representing the Minister for Police. Is the Minister aware that detective numbers within the New South Wales Police Service have fallen by 40 per cent in the last four years? Given that detectives perform an essential function within the Police Service by gathering criminal intelligence and conducting criminal investigations, what steps has the Minister taken or will he take to boost the number of detectives in New South Wales?

The Hon. JOHN DELLA BOSCA: The question deals directly with a Police Service operational matter. I am sure the Minister will be able to obtain from the service a full and detailed answer to the honourable member's question. I will ask him to do so and I will provide the answer at the Minister's earliest convenience.

WORKERS COMPENSATION FRAUD INVESTIGATION

The Hon. Dr BRIAN PEZZUTTI: Can the Minister for Industrial Relations guarantee that the "non-government investigator" who is to investigate workers compensation fraud in the building industry will be a genuinely impartial and non-partisan appointment and not simply used as another way of finding a job for a Labor mate?

The Hon. JOHN DELLA BOSCA: I think I know what the Hon. Dr Brian Pezzutti is referring to. He is referring to recent speculation and publicity—

The Hon. Michael Gallacher: It is not speculation; the Premier said it.

The Hon. JOHN DELLA BOSCA: No, Mr Ferguson said it, I think you will find. You should check what the Premier actually said. I can give a range of guarantees to the honourable member, including all the ones he has asked for. The Government believes that the person who takes up the role should be an appropriate person, as I have indicated to a number of people who have discussed this matter with me. It is important that the Government is aware of the practices that are occurring in private industry in relation to the collection of workers compensation premiums and also to widespread suggestions that many employers, especially in the construction industry and a number of other industries, do not meet their payroll tax obligations. The announcements by the Premier and other publicity—

The Hon. Dr Brian Pezzutti: Point of order: The answer is irrelevant to the question I asked, which is about workers compensation fraud and the investigator the Minister is talking about.

The PRESIDENT: Order! I have warned the Hon. Dr Brian Pezzutti before not to seek to make a debating point under the guise of a point of order.

The Hon. JOHN DELLA BOSCA: I was saying, I thought quite directly in answer to the question asked by the Hon. Dr Brian Pezzutti, that the Government would appoint someone outside government with expertise and knowledge of the construction industry to come up with the best way to ensure that employers meet their payroll tax obligations and pay their workers compensation premiums. The Premier commented on the issue the other day and, as I said, those comments, with slight distortions, have been widely reported in the media.

The Hon. Dr Brian Pezzutti: What about workers compensation fraud?

The Hon. JOHN DELLA BOSCA: It is very important—

The Hon. Dr Brian Pezzutti: He is dancing around, isn't he.

The Hon. JOHN DELLA BOSCA: It does get a little difficult. As I have said on a number of occasions, in the past 12 months this Government has done more to ensure compliance with workers compensation premium collection than—

The Hon. Dr Brian Pezzutti: What about workers compensation fraud?

The Hon. JOHN DELLA BOSCA: Exactly, that is what we have been doing. If the Hon. Dr Brian Pezzutti would listen to the answer he would be aware that in less than 18 months the Government has appointed twice the number of inspectors and investigators on compliance issues and it has undertaken a number of compliance blitzes. WorkCover has engaged new data mining software that informs its inspectorate services and ensures that its compliance campaigns are better targeted. The total additional premium collected due to the compliance effort of WorkCover was \$14.8 million, and that is a doubling of the amount collected in the previous year.

This financial year WorkCover is targeting a return of \$30 million. I take this opportunity to inform the Hon. Dr Brian Pezzutti and the Leader of the Opposition that, while compliance is important, honourable members should not be misled into thinking that a better compliance effort would solve the problems in the workers compensation scheme. The size of the deficit means that we cannot shirk our responsibility, which is what the Coalition did when it had the chance while considering the last round of reforms. The real issue is whether the Coalition will shirk the next round of reforms to reduce the costs of the scheme while ensuring that injured workers are better served by the system.

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

RECREATIONAL FISHING HAVENS

The Hon. MICHAEL COSTA: My question is to the Minister for Fisheries. What action has been taken to improve recreational fishing on the State's South Coast, from Wollongong to Narooma?

The Hon. EDDIE OBEID: I am pleased to advise the House that just two weeks ago I visited St Georges Basin to announce the creation of 10 new recreational fishing havens between Wollongong and Narooma. This process follows 21 months of consultation with the community and all stakeholders. By late 2002, no commercial fishing will be permitted in St Georges Basin and Tuross Lake. Commercial fishing will also be banned in a further eight smaller lakes and estuaries. From the recreational fishing fees, \$2.5 million will be used to buy out about 25 commercial fishers that operate in those waterways.

I am pleased to say that, since August, 45 commercial fishers in that area have already registered interest in a voluntary buyout. Therefore, more commercial fishers may want to leave than we need to remove. The average annual gross income earned by commercial fishers in those estuaries is just \$18,000. As I have said previously, those commercial fishers who will be bought out will receive fair compensation. Despite scaremongering by vested interests, banning commercial fishing from those estuaries will not affect our State's seafood supply, because less than 0.14 per cent of the State's seafood consumption comes from those areas.

The new angling havens are the direct result of the Government working with the community to create better recreational fishing, and the response has been strong. The community made more than 780 written submissions, nearly 70 per cent of which wanted recreational fishing havens. Submissions came from recreational and commercial fishers, the seafood industry, local environment groups, fishing clubs, the local council, businesses and families. Indeed, 421 submissions were received for St Georges Basin and 379 for Tuross Lake.

It is estimated that the 540,000 anglers who fish in that region inject up to \$64 million into the local economy. The creation of those 10 new recreational fishing havens is good news for the South Coast community. The havens will help share this community-owned resourced more fairly. The havens will create local jobs in the tourism, boating, hospitality and retail industries. I am sure that anyone who visits that area will enjoy a bite not only from the fish but also from their fishing.

HIH INSURANCE AND LAW COVER PTY LTD

The Hon. PETER BREEN: My question without notice is to the Treasurer, representing the Attorney General. Will the Attorney inform the House whether he has made a submission to the HIH royal commission concerning the relationship between HIH Insurance and past directors of Law Cover Pty Ltd, the professional indemnity insurance arm of the Law Society? If the HIH royal commission decides that the terms of reference do not extend to the Law Society or to LawCover Pty Ltd, will the Attorney hold a judicial inquiry into any financial links between HIH and past directors of LawCover Pty Ltd and the Law Society?

The Hon. MICHAEL EGAN: I am not familiar with any of the matters that the honourable member raised. I will refer his question to my colleague the Attorney General and obtain a response.

WORKERS COMPENSATION FRAUD INVESTIGATION

The Hon. DOUG MOPPETT: My question without notice is to the Minister for Industrial Relations. Now that the Government is to appoint a non-government investigator to investigate workers compensation fraud, can the Minister advise the House of what the 301 WorkCover inspectors are actually doing, given that effecting prosecutions is such a small component of their job, to use the Minister's own words in answer to a recent question?

The Hon. JOHN DELLA BOSCA: Again the Opposition is asking a question which is at cross-purposes. The Leader of the Opposition should be aware that a green paper on compliance has been in the public arena for some weeks. That green paper is about the methods of imposing compliance and ensuring that—

[Interruption]

Do you want the answer or not?

The Hon. Michael Gallacher: Yes, we are waiting for the real answer.

The Hon. JOHN DELLA BOSCA: Those methods will ensure that employers are paying the proper premiums for workers compensation. The Hon. Doug Moppett really asked about publicity for the facilitator to look at the ways that regulation or compliance can be maximised in the construction industry.

The Hon. Dr Brian Pezzutti: No, he isn't.

The Hon. JOHN DELLA BOSCA: Yes, that is exactly what he was asking about. That is what is meant by non-government investigators.

The Hon. Michael Gallacher: So there is no investigator?

The Hon. JOHN DELLA BOSCA: There will be no investigator. Someone will investigate the ways in which we can implement the green paper. He will not be out on building sites, doing the job of inspectors. Obviously, he will not do their job. There are twice as many of them as there were before and they make more prosecutions than inspectors in all the other agencies in all the other States and Territories. The new occupational health and safety regulation, which is going very well, involves an emphasis on advice, assistance and education. That regulation was put in place by the WorkCover inspectorate. Over the past four years the Construction, Forestry, Mining and Energy Union, as mentioned earlier by the Deputy Leader of the Opposition, referred 15 cases of alleged underinsurance to WorkCover for investigation.

The Hon. Dr Brian Pezzutti: Is that six a year?

The Hon. JOHN DELLA BOSCA: I am telling honourable members the facts. Fifteen reported cases of alleged underinsurance have been investigated by WorkCover. When the investigation was completed, more than 60 per cent of the allegations were proven and additional premiums of \$1.9 million resulted. That is a small amount when compared to the \$329 million in premiums paid by the more than 40,000 employers in the industry. WorkCover is also targeting the construction industry and its compliance initiatives.

WorkCover has developed sophisticated data analysis, as I said when replying to the previous question. These techniques are designed to identify those employers who are more likely to be non-compliant so that WorkCover's compliance campaigns can result in a net improvement in its financial position rather than costing more than they are worth. Initial results have been encouraging. Of the 167 investigations completed to date, about half were found to be non-compliant and additional revenue of \$3.9 million has been generated. WorkCover will continue to target non-compliance in the construction industry and more generally until all employers accept and meet their obligations.

JUVENILE JUSTICE SYSTEM ABORIGINAL OVERREPRESENTATION

The Hon. PETER PRIMROSE: My question is directed to the Minister for Juvenile Justice. What action is the Government taking to reduce Aboriginal overrepresentation in the juvenile justice system?

The Hon. CARMEL TEBBUTT: I think all honourable members would agree that reducing the overrepresentation of young Aboriginal people in the criminal justice system is a major challenge facing not just the Government but the broader New South Wales community. No-one who understands modern Australia doubts that disadvantage is disproportionately greater for indigenous Australians. Added to reduced life expectancy, lower education outcomes and higher unemployment are the higher rates of incarceration for both adult and juvenile Aboriginal offenders.

Far too many young indigenous people end up in detention or gaol. The Government has taken many steps to improve that situation, including the introduction of youth justice conferencing in 1998, formalising police warnings and cautions and the Premier's recent announcement of a trial of circle sentencing for young indigenous adults. These provisions are attempts to address overrepresentation at its starting point: the first point of contact with the criminal justice system. In addition, for many years the Department of Juvenile Justice has invested heavily in specific programs for young indigenous offenders, such as the Ja-Biah Bail Hostel in western Sydney, the Kemp project in Kempsey and the Purfleet youth centre near Taree.

The Department of Juvenile Justice also recently released a strategic plan to reduce Aboriginal overrepresentation in the juvenile justice system, which I will focus on particularly today. To create that document the department surveyed its staff as well as Aboriginal community organisations, chaplains, researchers and those with an interest in the area. It is important that all honourable members realise that it is not

most young Aboriginal people but a significant minority of them who spend time in custody. I am pleased that the Department of Juvenile Justice has accepted the challenge of attempting to improve outcomes for Aboriginal detainees. In many ways this plan is about better co-ordinating and refocusing the diversity of expertise and the range of programs currently on offer.

The success that the department has had in reducing the overall number of young people in detention now more than ever must flow on to indigenous young people. If this plan is to succeed it cannot rely only on a dedicated and innovative staff. It requires the co-operation of other agencies, non-government organisations and Aboriginal elders. The plan comprises nine key result areas and some 60 strategies. I will be happy to make a copy of the plan available to any honourable member who is interested in it. While the plan is ambitious, it is also a practical scheme. It is outcome based and will be evaluated independently over the next three years. Importantly, the plan not only addresses issues within the department but seeks to engage with those parties and those factors that have an inevitable impact on the incarceration of young Aboriginal people and that are entirely outside the department's control.

Of course, the Department of Juvenile Justice cannot reduce the level of overrepresentation on its own, but the plan provides the basis for co-ordinated action involving a range of stakeholders. The department will be working collaboratively with other government, non-government and Aboriginal community agencies to examine barriers and provide solutions that will contribute to a reduction in the rate of overrepresentation. I pay tribute to departmental staff, both Aboriginal and non-Aboriginal, who have embraced the idea of this plan and who have shown enormous enthusiasm in its development and in making it work. I sincerely hope that the action embodied by this plan will be effective in reducing the overrepresentation of indigenous young people in custody.

INNER CITY SCHOOL CLOSURES

The Hon. JOHN DELLA BOSCA: On 11 September the Hon. Patricia Forsythe asked me, representing the Minister for Education and Training, a question without notice about the School Closures Review Committee. The Minister has provided the following response:

The establishment of the Alexandria Park Community School steering committee was announced in the *Building the Future* education plan for Inner Sydney on June 14, 2001.

The operation of the Alexandria Park Community School Steering Committee will not conflict with the school closures review process as the first formal meeting of the Steering Committee is scheduled to be held on Thursday October 18 2001 after the School Closure Committee has finished its report.

LABOUR HIRE FIRMS

The Hon. JOHN DELLA BOSCA: On 11 September Ms Lee Rhiannon asked me a question without notice regarding labour hire firms. I now provide the following response:

Section 22 of the *Occupational Health and Safety Act 2000* does prohibit employers from imposing a charge or permitting a charge to be imposed on an employee, for anything done or provided in accordance with the Act or its regulations.

The *Occupational Health and Safety (OHS) Regulation 2001* places a further obligation on employers to ensure that each new employee receives appropriate induction training.

There is a clear statutory obligation imposed on employers, including labour hire companies, not to allow their employees to be charged for the provision of induction training. This requirement however does not extend to potential employees.

PARKLEA PRISON ESCAPEES

The Hon. EDDIE OBEID: On 11 September the Leader of the Opposition asked me, representing the Minister for Corrective Services, a question without notice relating to Parklea prison escapees. The Minister has provided the following response:

The incident at Parklea on 11 September 2001, including the level of information on the inmates available to the Department of Corrective Services, is currently the subject of Police and departmental inquiries. It would not be appropriate to make any comment until those inquiries have been finalised. This is especially true now that the inmates have been recaptured and are likely to face criminal charges in relation to the incident.

TRANSPORT CONCESSION POLICY

The Hon. EDDIE OBEID: On 18 September the Hon. Ian Cohen asked me, representing the Minister for Transport and Minister for Roads, a question without notice relating to transport concessions for the unemployed. The Minister has provided the following response:

In providing context to answer the Honourable Member's question, it should first be noted that, as Queensland and Tasmania do not provide transport concessions to unemployed persons at all, the situation for unemployed persons in NSW cannot possibly be described as worse than anywhere else in Australia. The Government rejects this assertion. I am advised that the Department of Transport is closely monitoring this situation. It is important to remember that the NSW Government provides the most generous transport concessions of any state in Australia.

In regard to the Half Fare Transport Concession Scheme, I am advised that its delivery was transferred on 1 December 2000 from the Department of Community Services (DOCS) to Centrelink. I am advised that there was no change to the eligibility criteria for the Scheme and I am advised that it was the move from the manual assessment system practised by DOCS to the electronic assessment system used by Centrelink that led to some persons being refused the concession who had previously obtained it.

The issue of Centrelink breaching clients is entirely an issue for Centrelink and the Federal Government to resolve. I am advised that some transport concessions are only available to persons receiving the full rate of benefit from Centrelink.

ROAD TUNNEL AIR FILTRATION

The Hon. EDDIE OBEID: On 20 September Reverend the Hon. Fred Nile asked me, representing the Minister for Transport, and Minister for Roads, a question without notice regarding tunnel filtration equipment. The Minister has provided the following response:

In light of continuing calls by some groups for installation of electrostatic precipitators in motorway tunnels, the RTA recently sent a high-level delegation to Norway, the acknowledged world leader in road tunnel construction, to further examine tunnel filtration technology.

The visit confirmed that as of August 2001, filtration equipment had been installed in six tunnels open to traffic, but was operating in only one—triggered by a timer switch during the morning and evening peak periods of business days.

The Norwegian Public Roads Administration (NPRA) confirmed that filtration is a complex area that is still being developed. It remains an area of ongoing research and investigation. The RTA is committed to working closely with Norwegian and other authorities to ensure stringent air quality standards are met in conjunction with motorway tunnel projects.

CROSS-CITY TUNNEL AIR FILTRATION

The Hon. EDDIE OBEID: On 26 September the Hon. Peter Breen asked me a question without notice regarding cross-city tunnel air filtration. The Minister for Transport, and Minister for Roads has provided the following response:

The question was addressed specifically to the Minister for Urban Affairs and Planning, Dr Refshauge and relates to potential conditions of approval that the Minister may impose on the Cross City Tunnel proposal. The question should be directed to the Minister for Urban Affairs and Planning for response.

Questions without notice concluded.

DEFERRED ANSWERS

The following answer to a question without notice was received by the Clerk during the adjournment of the House:

SOUTH COAST POLICE STATIONS

On 11 September 2001 the Hon Elaine Nile asked the Treasurer a question without notice concerning South Coast police station closures. The Minister for Police provided the following response:

Acting Commander P F Lindwall, Lake Illawarra Local Area Command, advises that the Kiama, Gerringong and Gerroa communities are provided a 24 hour policing response by police attached to the Lake Illawarra Local Area Command. These police focus their efforts on crime hot spots by intelligence driven rostering. The Police Service is of the opinion that the community is better served by police by effectively tasking and deploying resources in a high profile proactive role rather than as a reactive resource attached to a Police Station.

Acting Commander Lindwall advises that police are tasked to perform proactive work including the targeting of high risk offenders, executing warrants, conducting community consultation and carrying out foot patrols.

With respect to Gerringong Police Station, I am advised that the Station is located in the Central Business District and is staffed every Monday between the hours of 9 am to 3 pm. Acting Commander Lindwall indicates that the officer who attends this location is stationed at Kiama and is able to provide a mobile proactive response to both the Gerringong and Gerroa sectors. Policing in the area is also supplemented by Albion Park and the South Eastern Region Target Action Group.

The Honourable Member may also be interested to learn that on 31 August 2001, 234 new Probationary Constables were deployed to 52 metropolitan and rural Local Area Commands across NSW following their attestation at the Goulburn Police Academy. This brings the total number of police in NSW to a record 13,712. Of these 234 officers, 7 have been specifically deployed to the Lake Illawarra Local Area Command to help drive down crime in the area.

Acting Commander Lindwall assures me that staffing levels at Kiama, Gerringong and Gerroa will be monitored and the local community will continue to receive a professional policing service from the Lake Illawarra Local Area Command.

POLICE POWERS (VEHICLES) AMENDMENT BILL

Second Reading

The Hon. JOHN HATZISTERGOS, on behalf of the Hon. Michael Egan [5.06 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.

On 4 September the Premier announced a comprehensive package to respond to gang crime.

The Government has already introduced the first part of that package, the *Crimes Amendment (Aggravated Sexual Assault in Company) Bill 2001*.

This bill forms another part of the Government's anti-gang package, with further legislation to be introduced after Parliament's resumption.

The *Police Powers (Vehicles) Amendment Bill 2001* makes several improvements to the *Police Powers (Vehicles) Act 1998*, which was introduced after the cowardly drive-by shooting attack on Lakemba police station in November 1998. Those amendments will assist police in the investigation and prosecution of gang and other offences.

The Ombudsman, who was responsible for monitoring the operation of the Act for its first year of operation, reported on its operation in 2000. The Act was subsequently reviewed by the Ministry for Police, having regard to the Ombudsman's report.

Whilst the review concluded that the Act was generally working well, a number of improvements were identified.

Currently, section 6 of the Act permits police to demand drivers and owners of vehicles reasonably suspected of having been used in the commission of an indictable offence to provide them with certain identity information.

Some magistrates have taken a very narrow approach to defining "used in the commission of an indictable offence". The Local Court in the 23 June 2000 case of *Police v Vivienne Mason* held that police could only use their powers when the use of the vehicle was itself an element of the offence, for example where the vehicle was used in a ram raid or to run over a person.

The clear intention of the legislation is to enable police to use their powers when a vehicle has been used to escape from the scene of a crime, and most magistrates have applied the Act in this way.

The Ombudsman recommended that consideration be given to amending the Act to prevent magistrates adopting a narrow interpretation of the provisions. Accordingly, the amendment to section 6 (1) of the Act enables police to use their powers when a vehicle has been used in connection with the commission of an indictable offence.

Whilst the Act enables police to ask owners and drivers of vehicles to disclose the identity of the driver and passengers of a vehicle, the Ombudsman notes there is no power in the Act to request a passenger to produce identification details.

Whilst the Act enables police to request that the driver of a relevant vehicle identify him or herself, there is no power to request the passengers to identify themselves, even where they are present when the driver is being questioned.

In some cases the passenger may be more directly linked to the offence than the driver or owner of the vehicle, for example where the driver is a "get-away driver" and the passenger the principal offender. In drive-by shootings, such as the one on Lakemba police station, it is rare for the shooter to be the driver.

The Act gives police the power to directly ask passengers to disclose their identity and the identity of other occupants of the vehicle. This will assist in verifying information provided by other vehicle occupants and discourage the making of false or misleading statements as to identity.

This additional power may be of assistance to police in responding to gang-related criminal activity, where a number of gang members leave the scene of a crime in a vehicle. As noted in the second reading speech to the Act, the identification provisions were introduced to break the "*strict code of silence*" that most gang members adhere to.

This code appears to be the only code the gangs respect. They certainly have no respect for the law.

It is likely that the driver of a vehicle may not assist in identifying a passenger who is a fellow gang member. In a deliberate attempt to obstruct justice, the driver may claim to be ignorant as to the passenger's identity or simply refuse to properly answer the request. This may prevent police from following up an important lead in their investigations.

Giving police the power to question passengers directly will help to overcome this problem.

It is possible that police could ask passengers to provide their identity under section 563 of the *Crimes Act 1900*. However, that section does not enable police to ask passengers to identify other passengers or the driver of a vehicle. It also only provides for a penalty of \$220 for a failure to refuse to comply with the request. Section 563 is designed primarily to identify potential witnesses, not potential offenders. A \$220 penalty is not going to be sufficient to get potential indictable offenders to disclose their identities.

The bill provides that passengers who refuse to give relevant identity information can be charged with an offence carrying a penalty of 12 months imprisonment and/or \$5,500. As noted in the Ombudsman's report on the Act, police officers have identified that the high penalties under the Act are the major motivating factor for persons to breach the code of silence.

The bill also amends the definition of identity in section 3 of the Act to make it clear that identity has the same meaning in respect of both drivers and passengers.

Whilst the Act currently enables police to request name and address information, it does not give them the power to request proof of the information they provide to police. The bill inserts a new section 9A to the Act, which gives police the power to request drivers or passengers of vehicles to provide proof of their identity.

This will reduce the likelihood of people providing false identity information under the Act, and assist police in prosecuting offences relating to the provision of false information, which also carries a penalty of 12 months imprisonment and/or \$5,500.

The bill also amends section 10 of the Act. Section 10 gives police the power to stop and search vehicles where the officer reasonably believes the vehicle may have been used in the commission of an indictable offence and the exercise of the powers may provide evidence of the offence.

It also allows police to stop and search vehicles where the officer reasonably believes that the exercise of the powers will lessen the risk to public safety.

The bill amends section 10 to remove the requirement for police to obtain the approval of a senior officer to stop and search vehicles under that section, except where roadblocks are used.

Whilst the senior officer authorisations were introduced to provide for an additional level of scrutiny in the use of vehicle stop and search powers under the Act, the Government is satisfied that these authorisations are generally unnecessary and simply add an extra layer of bureaucracy to a system that often requires quick action to be taken.

The Ministry for Police review of the Act found that similar stop and search powers to those in section 10 exist under other legislation without there being any requirement for a senior officer to authorise the use of those powers.

Section 357 of the *Crimes Act 1900* permits a police officer to detain and search any vehicle which the officer reasonably suspects contains a dangerous article reasonably suspected of being, or having been, used in the commission of an indictable offence.

Section 357(e) of the *Crimes Act* permits an officer to stop and search a person or vehicle if the officer reasonably suspects that he or she has or it is conveying anything stolen or otherwise unlawfully obtained, or anything used or intended to be used in the commission of an indictable offence.

Section 37(4)(b) of the *Drug Misuse and Trafficking Act 1985* permits an officer to stop, search and detain any vehicle if the officer reasonably suspects that it is carrying prohibited drugs.

As noted in the Ombudsman's report, some officers have reported on occasion that it may be too time consuming to find a senior officer when urgent vehicle stop action must be taken.

The Ombudsman recommended that the Police Service monitor the operation of the authorisation provisions to determine whether to recommend that the Act should be amended to permit non-compliance with the stringent authorisation requirements in exceptional circumstances.

It is not proposed to create an "exceptional circumstances" test. That would require an officer involved in stopping a vehicle to make an additional judgement call as to whether the circumstances are exceptional in a situation where a quick response may be needed. It would then require the court to assess whether the circumstances were exceptional in determining whether the vehicle stop was lawful or not.

Certainty is required in these circumstances. Consistent with other legislation, police may generally stop and search vehicles under the Act without tossing up whether the circumstances of the stop and search are exceptional or not.

However, the Ombudsman's report makes it clear that there are public safety issues involved in setting up any road block. The Act is the only legislation that gives police road block powers and it is clear that those powers need to be exercised through a careful balancing of whether the public safety and law enforcement benefits of a road block outweigh the negatives. Accordingly, the bill recognises the importance of senior officer authorisations wherever a road block is used.

Finally, section 16 of the Act requires the Ombudsman to monitor the exercise of the additional powers here conferred on police for the next 12 months.

This bill clarifies and improves the operation of the *Police Powers (Vehicles) Act 1998*. It gives police additional powers to obtain identity information from potential suspects and provides prompt and certain vehicle stop and search powers.

I commend this bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [5.06 p.m.]: The Opposition supports the Police Powers (Vehicles) Amendment Bill, which will provide significant and wide-ranging reforms by giving police the power to ask questions of people in motor vehicles that are suspected of being used in, or in connection with, the commission of indictable offences, amongst other things. Specifically, the objects of the bill are: to make it clear that the same identity particulars—that is, name or residential address or both—may be required of both drivers and passengers of vehicles suspected of being used in or in connection with the commission of an indictable offence; to make it clear that police powers relating to obtaining information about the identity of drivers of, or passengers in or on, vehicles suspected of being used in the commission of an indictable offence also extend to vehicles suspected of being used in connection with the commission of such offences; to require passengers in or on vehicles suspected of being used in, or in connection with, the commission of indictable offences to disclose their identity or the identity of the driver or any other passengers; to give police officers the power to request drivers of, or passengers in or on, vehicles who are required to disclose their identity to provide proof of that identity; and to remove the requirement for a police officer to obtain the authorisation of a senior police officer before exercising vehicle stop-and-search powers, other than road block powers.

It is important to note from the outset that the legislation we are amending today, the Police Powers (Vehicles) Act, was reviewed recently by the Ombudsman, who was responsible for monitoring and reporting on its first year of operation. A number of matters subsequently highlighted by the Ombudsman have since been reviewed by the Ministry for Police, including how the courts have interpreted the Act. Unfortunately, narrow interpretations of the powers provided in the original legislation have caused practical problems for police in the field. A small number of court decisions narrowly interpreted the original intention of the Act, and as a result the Ombudsman acknowledged the necessity of amending the Act. This bill brings those amendments to Parliament.

One of those court decisions is the case of *Police v Vivienne Mason*. In the June 2000 decision it is understood that the Local Court determined that the provisions of the Act relating to vehicles applied only when the vehicle was used in the actual commission of the crime—in this case, used in a ram raid or to run over a person. The amendment now before the House will permit police to obtain information when they suspect that a vehicle has been used in the commission of an indictable offence. That is distinct from police being required to show that a vehicle was actually used in the commission of such an offence. The practical impact of the decision in *Police v Vivienne Mason* seems to be that it is almost impossible for police to establish that a car has been used in the commission of an offence when they are trying to move actively based on a reasonable suspicion rather than after the event. There are several other provisions along similar lines, all of which have been highlighted as solutions to problems identified by the Ombudsman.

From a practical perspective, the decision to provide police with the ability to stop people or vehicles suspected of being used in the commission of an offence is long overdue. To finally have legislation that gives police power to demand identification information from drivers or passengers in vehicles used in or in connection with the commission of an indictable offence is incredibly long overdue, but it is certainly a positive move.

The Office of the New South Wales Ombudsman undertook a lot of work on the original legislation and I am sure that if the Minister took the time to go through the original debate he would see that the Ombudsman has rectified many matters following the annual examination of the legislation. The Government would be well advised to listen to the concerns raised by the Opposition at the outset and not allow legislation to simply go through the process only to find its way back here to be improved in 12 or 15 months time.

The Government does not take the time to listen to points raised in debates on this and other legislation in this Chamber. Instead, it simply discounts them as being unworkable or unrealistic. Once again we find ourselves passing reforms to the Government's legislation—reforms which could have been put in place 12 months ago. At least the Government has taken the positive step of acknowledging that it got it wrong. The idea was right, but it did not provide the necessary legislation to circumvent cases such as the Vivienne Mason case, which I referred to earlier. If the Government had listened to our views in the first place this step could have been avoided. We support the legislation.

The Hon. HELEN SHAM-HO [5.12 p.m.]: I am pleased to support the Police Powers (Vehicles) Amendment Bill and I welcome the opportunity to speak to it. The bill seeks to amend the Police Powers (Vehicles) Amendment Act 1998 by giving police expanded powers in relation to the investigation and prosecution of gang-related crime. In effect, the bill implements the recommendations contained in the Ombudsman's report on the operation of the Police Powers (Vehicles) Act 1998, which was released last year. To be more specific, new section 6 (1) will enable police officers to require any passenger in a vehicle suspected of being used to commit an indictable offence to provide proof of their identity as well as the identity of the driver or other passengers of the vehicle. The bill makes clear also that police may use their powers to request identity information from drivers and passengers where the vehicle was not used to commit the offence but was used in connection with it, such as being used to flee the scene of the crime.

I understand that a number of civil libertarian arguments have been raised in relation to these amendments, as is often the case when police powers are extended. However, I am confident that the civil rights of the community will not be infringed by this provision. I was informed by an adviser to the Minister for Police at a crossbench briefing on 18 September that if people do not have the requisite identification on them at the time the police request it, no further action will be taken. The bill also makes amendments with respect to police officers' stop and search power. Currently police may stop and search a vehicle where the officer reasonably believes that the vehicle may have been used in the commission of an indictable offence. Schedule 1 [8] to the bill removes the requirement that a police officer must obtain authorisation from a senior officer before he or she may stop and search a vehicle, if the officer believes that it is in the interests of public safety to do so. I believe that the obligation for a police officer to obtain authorisation to stop and search a vehicle could be untenable in situations requiring quick action on the part of the police.

As honourable members may recall, on 4 September Premier Bob Carr announced a package of reforms to tackle gang-related crime in New South Wales. We have already seen the first part of that package, the Crimes Amendment (Aggravated Sexual Assault in Company) Bill, which created a new offence of aggravated sexual assault in company, or gang rape, with a penalty of life imprisonment. This bill forms another part of the Government's anti-gang package and I understand that further legislation dealing with the formation of gangs, particularly the recruitment of children and other gang-related activity, will follow in the next few weeks. It is worth noting also that earlier this year, as part of the Carr Government's so-called Cabramatta package, this Parliament gave police officers in New South Wales greater powers with respect to policing drug houses, moving on suspected drug dealers and executing internal searches. While I support giving police officers in this State expanded powers to tackle both drug-related and gang-related crime, I believe that a strict law-and-order approach to these complex social problems is not enough. To tackle this problem effectively we must look to the underlying causes of these crimes, such as why young people take drugs or join gangs in the first place.

As I have said in this Chamber, there are conditions and factors that render young people vulnerable to drug dependence, such as poverty, family dislocation, social disadvantage and long-term unemployment. When we talk about youth gangs, factors such as inadequate employment, housing and recreational opportunities for local youth may be equally relevant. Cabramatta, a suburb with which I am now very familiar, is a classic example of an area with high youth unemployment, few recreational opportunities and known gang activity. Cabramatta has no vocational employment programs for the unemployed, nor does it have any real recreational centre activities for young people. While Cabramatta does have a Police and Community Youth Centre [PCYC], a renewed commitment on the part of the Cabramatta local area command is required if the centre is to be successful in providing services for young people in the area. It was one of the recommendations of General Purpose Standing Committee No. 3 inquiring into Cabramatta policing resources that the PCYC be re-energised.

When I was in Cabramatta on a Saturday a few weeks ago I was appalled to see that the PCYC was closed. Surely if there is a time when young people are looking for something to do or some place to go it is on the weekend. On a brighter note, I welcome the efforts of Fairfield City Council to expand recreational and employment opportunities in its area as well as the efforts of the Cabramatta project in the Premier's Department. While there are factors that make joining a gang particularly attractive to some young people, we should not forget that youth gangs in this State come from all races, religions and socioeconomic groups. It is disappointing that in recent weeks the media has been saturated with stories of ethnic gang violence. What I found particularly disturbing in some media reports was the way in which ethnicity and gang-related crime was inextricably linked. This was particularly true for members of the Lebanese community in Australia, with young Lebanese men essentially branded as rapists. It is not fair and it is unjust.

There is no evidence to suggest that ethnic communities are more likely to join gangs or commit crimes. Nor is there any inherent connection between certain ethnic groups and crime. People are criminals

because they commit a crime, not because they are of a particular race, creed or cultural background. To suggest otherwise leads to an atmosphere of hysteria, stereotyping and harassment of ethnic communities. One needs only to look at the treatment the Muslim community in Australia has received over the past few weeks. Since the horrific terrorist attack on America on 11 September members of the Muslim community have been intimidated, vilified and abused. A few weeks ago I met with representatives of the Muslim community, as I indicated in an earlier debate. They told me that they feel threatened in the country they call home. I am sure honourable members will agree that that situation is intolerable and should cease.

In conclusion, while I do not believe that anti-gang legislation will itself solve the problem of gang-related crime in this State, I acknowledge that the community has a right to feel safe. I am a realist and I know that New South Wales has a youth gang problem. I believe that this bill will go some way towards alleviating the community's concern in this regard by assisting police to investigate crimes committed by gangs and to gather gang-related intelligence. I commend the bill to the House.

Ms LEE RHIANNON [5.20 p.m.]: Here we have another conservative law-and-order bill. For a fleeting moment I even felt sorry for the Coalition. This bill leaves the leaders of the Coalition nowhere to turn; they would be proud to have introduced it. The Government is making it so hard for the Coalition. The best we heard from the Leader of the Coalition in this House, Mr Michael Gallacher, was the plaintive plea, "Listen to us. Listen to us." It is a sad way to conduct business. The Coalition needs to realise that it cannot beat Labor on the law-and-order agenda. It is time that Coalition members stepped out of the square and started to think for themselves. As we heard in the Minister's second reading speech, this bill is part of the Government's anti-gang package. It is abundantly clear that the Government is not listening to sane voices or rational and balanced views, but is instead trying to win votes by exploiting and deepening the fears and prejudices of the community. We are currently at a very low point in Australian politics. Major parties are inflaming and preying on people's fears.

The Hon. Michael Gallacher: How are they doing that?

Ms LEE RHIANNON: He knows how they are doing that.

The Hon. Michael Gallacher: Come on, how are they doing that?

Ms LEE RHIANNON: He should listen and he will see how the Howard Government is doing it.

The Hon. Michael Gallacher: You tell us how they are doing that. You make the claims.

Ms LEE RHIANNON: The Howard Government is preying on people's traditional fears of foreigners. He is exploiting both the hidden and explicit racism within our society. It is politics at its most base, its most irresponsible and its most divisive.

The Hon. Michael Gallacher: Tell us how.

Ms LEE RHIANNON: Through the very racist comments that have come from his leader. That is what he knows.

The Hon. Michael Gallacher: How? What racist comments has my leader Kerry Chirakovski made?

Ms LEE RHIANNON: I was referring to the Federal leader.

The Hon. Michael Gallacher: What comments has he made?

Ms LEE RHIANNON: Many comments about the refugees. We have reached a very low point in Australian politics. The Greens strongly oppose this bill. The Government attempts to justify the bill by arguing that crime in our community is rising. This is demonstrably false: crime in general is not rising. The Premier understands very well how to exploit community fears. It is something we have seen from leaders at both the State and Federal level, and the Greens greatly regret that politics have sunk to that level. It is particularly unfortunate for the Premier. I hope he is not remembered for the way in which he conducts law-and-order debates and uses them for political gain. When the Premier talks about crime and uses terms such as "ethnic gangs" it is a calculated attempt to tap into the fears of many people. The Greens believe that leaders should rise above the prejudices of some people.

When the Carr Government pushes for outrageous developments that increase residential density across Sydney, and then the Premier talks about limiting immigration on environmental grounds, it is a calculated attempt to appeal to racist elements in our society who blame migrants and immigration for our problems. One does not need to be a genius to understand the game that the Premier is playing, which is very similar to the game that the Prime Minister is playing. The Police Powers (Vehicles) Amendment Bill is very much a part of the law-and-order agenda used by the Carr Government to hoodwink the people of New South Wales. In 1998 the Government introduced the Police Powers (Vehicles) Bill to give police increased powers to stop vehicles and question their occupants. We opposed the bill because when police are given more powers we see consistently that they abuse those powers. The Greens are not saying that; it was one of the chief findings of the Wood royal commission.

The Hon. Michael Gallacher: They are cop haters, aren't they?

Ms LEE RHIANNON: I note the interjection from the Attorney General to be. The sorry state of affairs in New South Wales at the moment is that many people have given up complaining because there are so few results when they go public with their concerns. It is three years since the legislation was first introduced, and we now have before us a bill to toughen the Police Powers (Vehicles) Act, to make police powers greater and penalties harsher. The bill has a number of fundamental flaws. The Government has not established that it is necessary. We have been presented with no scientific data to prove that the relevant categories of crime have risen. All these powers will be effective, presumably because there is no data. Even if the Government could prove that the relevant categories of crime have risen, the bill would do absolutely nothing to reduce crime. Tougher penalties do not reduce crime—the history of our State and our country tells us that they never have. Remember our forebears, all those convicts who were brought to this land?

To understand that crime is driven by social and economic factors is a lesson that both major parties need to take on board quickly. The threat of hanging or transportation did not stop the poor from stealing then, and tougher penalties and extended police powers will do nothing to reduce crime now. The bill will lead inevitably to increased incidences of police abusing their powers. When the Government provides police with greater powers without clear justification for that increase the situation is open to abuse. The bill will give junior police discretionary power to stop vehicles and question their occupants if the officer in question suspects on reasonable grounds that the vehicle is being, was or may have been used in or in connection with the commission of or in any indictable offence.

That sounds well and good, but the sort of people likely to be targeted by police certainly are not people in this House, and not those who, at the moment, are ridiculing what I say. I am referring to young people, people of non-English-speaking backgrounds and indigenous youth. They are not likely to understand the intricacies of the law. These broad and unjustified powers will make it easier for police to pull over vehicles on flimsy grounds, and effectively harass their occupants. We have heard explanations that people, apart from the driver, will not have to prove their identity on the spot. However, as the law now states that police can ask occupants of a vehicle to produce proof of identity, it is clearly a way in which police will abuse their powers. In the post-Wood royal commission environment, the bill is sending the wrong signal to junior police.

The Opposition's schoolyard chortling humour is absolutely amazing when one considers how the police are currently wallowing in corruption. All we have from the Opposition leader is his rude, overbearing, standover, schoolyard tactics. It is the best he can come up with. It is a sorry state for the Opposition. The Premier's slogan is: Tough on crime, tough on the causes of crime. It will be interesting to hear the Minister in reply. Where are the bills that get tough on unemployment? Where are the bills that get tough on the poor levels of numeracy and literacy, and other skills needed to progress in our society? Where are the bills to revitalise our public education system and give all young people a fair shot at life?

The Hon. John Della Bosca: We are doing it.

Ms LEE RHIANNON: If the Special Minister of State went to western Sydney he would see a vast difference. The schisms in our society are huge.

The Hon. Michael Gallacher: How would you know? You live in the eastern suburbs.

Ms LEE RHIANNON: Because I am on the road most of the time. It is only when the Government is prepared to meaningfully address the real causes of crime—poverty, unemployment, lack of education, alienation and drug prohibition—that we will stop going backwards and start making progress. The Premier is running the risk of being remembered for his short-sightedness when it comes to addressing the needs of the people of New South Wales.

Reverend the Hon. FRED NILE [5.29 p.m.]: The Christian Democratic Party supports the Police Powers (Vehicles) Amendment Bill, which is long overdue. The bill makes it clear that the same identity particulars, that is name or residential address, or both, may be required of both drivers and passengers of vehicles suspected of being used in or in connection with the commission of indictable offences.

The bill empowers police to obtain information about the identity of drivers of, or passengers in or on, vehicles suspected of being used in the commission of indictable offences, and extends that to vehicles suspected of being used in connection with the commission of such offences. The bill also requires passengers in or on vehicles suspected of being used in or in connection with the commission of indictable offences to disclose their identity or the identity of the driver or any other passengers. In addition, the bill will give police officers the power to request drivers of, or passengers in or on, vehicles who are required to disclose their identity to provide proof of that identity, and removes the requirement for a police officer to obtain the authorisation of a senior police officer before exercising vehicle stop and search powers—other than road block powers.

As a result of activities relating to organised crime, drive-by shootings and gang warfare—sometimes even drive-by shootings at police stations—it is obvious that these powers are required and should always have been available to police in the conduct of their duties. It appears that some people are happy to have police so long as their hands are tied and they cannot carry out their function, that is, to protect the community and to prevent crime. This bill will help to prevent the commission of crime and, hopefully, prevent the use of vehicles in the course of some of these activities.

I do, however, have a question about the bill. Proposed section 9A, which relates to the power of police officers to request proof of identity, provides that passengers in the vehicle have to provide proof of identity. What form of identification would be sufficient to satisfy that test? We do not have ID cards in New South Wales. Does that section refer to a driving licence? There is a possibility that the passenger asked to provide proof may not have a licence—in fact, the driver of the vehicle may not have a driving licence. That, of course, would allow the police to charge that person with being an unlicensed driver. That would get them off the road and perhaps prevent them from carrying out the even more sinister activity they may have planned.

I leave it to the Government to provide an answer to that question. With regard to the random breath testing powers whereby police can simply conduct the breath testing of a driver in order to identify whether or not the driver is over the limit, I have always thought it should be possible for police, should they have a suspicion resulting from the behaviour of a driver or passengers in a vehicle, to ask that a licence or form of identification be produced at that point, and even to check whether or not the vehicle is registered.

The Hon. Michael Gallacher: Police have that power already under the Motor Traffic Act.

Reverend the Hon. FRED NILE: I believe it should be used. I have not heard of it being used. I know it is often the case that police are trying to get through as many breath tests as they can. Obviously, they are expected to test a number of drivers and they do not want that activity delayed by having to conduct additional checks. However, I believe that should be done, even if it is done on a spot-check basis. It would, I suggest, frighten those who break the law or are planning to break the law, not only in respect of drink-driving but also with regard to driving without a licence or driving an unregistered vehicle. If there is any suspicion of such offences, appropriate checks should be carried out by the police.

We support also the vehicle search powers and the explanation relating to road block authorisation. An earlier speaker suggested that talk about fear in the community was either exaggerated or not based on reality. I believe this bill is designed to put fear into criminals. The purpose of the bill is to make life more difficult for criminals. Honourable members should also note that the bill includes a monitoring aspect, whereby the Ombudsman will monitor the operation of the Act for a period of 12 months. I am sure that will involve scrutiny in order to determine whether these powers have been abused. I do not believe that will prove to be the case. This is a balanced bill and the Christian Democratic Party is pleased to support it.

The Hon. IAN COHEN [5.34 p.m.]: Thank you, Mr Acting-President.

The Hon. Michael Gallacher: He will distance himself from his colleague in a minute.

The Hon. IAN COHEN: I do not need the pretend Leader of the Opposition to tell me how I am going to act in this House. In fact, I support my colleague on this bill. The real problem in this House is the distancing

of the Opposition from the Government. Every time primitive, knee-jerk, law-and-order legislation such as this comes before the House the Government and the Opposition go hand-in-glove. They are like Snugglepote and Cuddlepote. There is no difference between them, and that is the problem. It is a shame they are not of the same party. With every piece of law-and-order legislation it introduces the Australian Labor Party goes far to the right, leaving the Opposition nowhere to go. As Ms Lee Rhiannon said so clearly earlier, the Greens do not support this bill.

The Hon. John Della Bosca: Another unanimous caucus decision?

The Hon. IAN COHEN: In fact, it was. With great interest we will take note of the positions that will be adopted in this House by some of the newer members of the Government in particular. It will be interesting to see whether a unanimous position is taken by them—given some of the recent Greens bashing and anti-environmental rhetoric that has emerged from the parliamentary committees. At the same time as the ALP is trying to placate the Greens movement while chasing preferences for the forthcoming Federal election, its members in this House have come out with some really good old-fashioned Labor boomer boy tricks suggesting that jobs and the environment somehow do not mix. It is pretty primitive.

[*Interruption*]

The Coalition does not have much room to move as it lurches to the right. I entreat the Leader of the Opposition not to presume to know how the Greens work and what we think. The briefing note supplied to the crossbenchers stated that the main purpose of this legislation is, "... to amend the Police Powers (Vehicles) Act 1998 in response to the recommendations of the ministerial review of that Act and concerns about gang-related crime". This is another law-and-order bill that fails to address any of the underlying issues surrounding the perceived gang problem. The Greens believe this kind of legislation will have no impact whatsoever on the gang issue. Why do individuals get involved in gangs or, as the Greens could call them, affinity groups, friendship groups—whatever they might be?

[*Interruption*]

How many people in this room have not belonged to some sort of youth group gang situation where—

The Hon. Michael Gallacher: The 5-T is a friendship group, is it?

The Hon. IAN COHEN: I am not talking about the 5-T; I am talking about schoolyard groups and young people hanging out together. I wish you would grow up a little bit.

The Hon. Michael Gallacher: Gangs involved in criminal activity, that is what this legislation is about.

The Hon. IAN COHEN: I am not talking about criminal activity. The very point is that you are labelling different groups in the community as gangs when they have not committed any crime. It is very convenient. If a group of Aboriginal people or young Lebanese people hang out together, they automatically become a gang, often to be targeted by police. They are individuals in a peer group, bound together by a common interest, goals or aims. I am not denying the criminal element, but let us look at how this proposed legislation will work.

Not all these groups commit crimes. In fact, most groups do not commit crimes, yet politicians and the media would have us believe that when groups of people, very often young people, hang around in so-called gangs they are inherently criminal and likely to commit crimes. These groups are lumped together, stigmatised and given the label "gang". That is the assumption and background to a whole range of legislation that has been enacted since the Carr Government came to office.

[*Interruption*]

The Hon. John Ryan interjected to say "gleefully". Yes, indeed—

The Hon. Michael Gallacher: Put that on the record.

The Hon. IAN COHEN: I am talking about legislation that has already been before this House, the Children (Protection and Parental Responsibility) Act, the police and public safety bill, and numerous other bills

that were introduced in the past few years that substantially increased police powers. Instead of dealing with the issue at hand, that some groups of people sometimes commit crimes in certain circumstances, politicians and the media would have us believe that all such groups, particularly those that hang out in public places, are involved in dubious activities. The public at large is whipped up, becomes hysterical and frightened into believing we are in the middle of a crime and gang crisis. We blame external groups—those that we can target easily—at every instance. This is certainly not new. However, the timing is almost always the same: just before an election or by-election. The Premier made statements about gangs and promises on the run just before the Auburn by-election. This bill is simply a follow-through of the promises he made during that campaign. Whipping up public hysteria certainly will not solve any real problems; neither will a bill such as this. It is irresponsible of politicians and the media to frighten the public in such a way.

I go back to my original question: Why do some sets of youth commit crimes? The answer is easy: unemployment, poverty, child abuse, drug and alcohol abuse—the list is endless. How do we reduce crimes? The Greens say the same thing over and over again: we need to invest resources into programs that help individuals and groups of individuals that are in danger of committing crime. We need to give them something worthwhile to do and provide them with welfare, educational opportunities, employment, adequate housing and access to services they desperately need. On top of this we need sensible drug policies and programs. This and only this will reduce crime in our community. Endless police powers, increasing prison sentences and law and order policies will not reduce crime. They will not discourage the small minority who do commit crimes from committing more crimes. Giving police the power to require passengers of relevant vehicles to provide information as to their identity and the identity of other occupants of the vehicle would not prevent the Lakemba shootings, the Edward Lee murder or the gang rape that has been in the media recently that appears to be a precursor to this bill and the Crimes Amendment (Aggravated Sexual Assault in Company) Bill. This type of bill deals with the horse only after it has bolted. It fails to address in a meaningful way the root causes of why a small minority of people commit these crimes. The Greens oppose the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.42 p.m.]: The Australian Democrats are concerned about the bill. We think its genesis was the Auburn by-election. A 700-page draft bill on law enforcement powers and responsibilities is on the web site of Parliamentary Counsel for public discussion. We are all for having a comprehensive look at police powers and intelligent discussion of the pros and cons of the whole issue. But in this case a small part of that draft bill has been pushed to the fore. We ask why. We are not saying that people should not have to give identifying information to police so that the job of police is more difficult. We are not saying that life should be easier for criminals and harder for police. What we are saying is that we need a comprehensive discussion. Privacy Commissioner Mr Chris Puplick made the point that in the end, with the terrorist risk, we will have to titrate security against individual liberty. If we are willing to live in a police state and be strip searched wherever we go, we perhaps can be a little safer from terrorists, assuming that they are wearing strap-on bombs rather than posting anthrax letters. We can feel safer by demolishing our civil liberties. This needs to be looked at in a broad framework. What are our risks and how much power do we want to give the police to infringe our civil liberties to minimise those risks?

At the moment there is hysteria in the world. It may be sufficient to change the course of the Federal election. The Prime Minister, who was doomed—deservedly, I believe—may have got a new lease on life because of the terrorist bombing of the World Trade Center on 11 September. To me the lesson of that day was that no matter how much military power you have you cannot stop terrorist bombings. Interestingly, the response was to do more bombing by military power, increasing the risk of terrorism. Terrorism is a separate risk from organised crime but it is similar in the sense that police powers have to be titrated against civil liberties in order to get a sensible balance. Decisions should be made with full discussion of the public and not in an atmosphere of hysteria.

This bill is defensible if considered on its merits, but not when considered in the broader context of why there are gang problems. The answer is our poor drug policy. It is not when considered in the context of how much of our civil liberties people are willing to forgo in order to increase security. As such, we think the bill is half baked. It was introduced to win the Auburn by-election. The Government ought to be a little more responsible and sensible in the way it looks at police powers and what is done with them. One must ask why a 700-page bill is sitting there for public discussion and this bit of it is pushed into the Parliament as a little piece of legislation standing on its own.

The Hon. RICHARD JONES [5.46 p.m.]: This bill amends the Police Powers (Vehicles) Act 1998. The Act was monitored in its first year of operation by the New South Wales Ombudsman. The Ombudsman's report of August 2000 included 22 recommendations highlighting a number of matters of importance. Some are

included in the bill; others are not but should be. The bill gives police the power to require both passengers and drivers of a vehicle to provide information as to their identity if their vehicle is suspected of being used in or in connection with the commission of indictable offences. Passengers are required to disclose their identity or the identity of the driver or other passengers. The bill also makes it clear that the police may use these powers even when the vehicle was not an element of the offence. The police will no longer have to seek senior officer authorisation to stop and search a vehicle under the Act except in circumstances in which a roadblock is used. The Ombudsman will monitor these new powers for a period of 12 months from the date the bill is assented to.

In the Ombudsman's first report a number of concerns have been raised in relation to recommendations not implemented. The Ombudsman's second recommendation is that the Police Service amend its suggested "form of demand" to ensure that officers inform persons they need not comply with a request to disclose their name and address if they have a reasonable excuse not to do so. The Vehicles Act provides that it is an offence not to comply with a demand from a police officer to identify drivers and passengers unless a driver or owner "has a reasonable excuse for not doing so". The Ombudsman recommended that adding the words "unless you have a reasonable excuse not to do so" would provide a more accurate and comprehensive statement of the responsibility of the driver or owner to provide information.

This recommendation is not supported by the Minister for Police. The response from him was that officers should ask for reasons for refusal and consider those reasons prior to consideration being given to charges being laid. The difference in the two approaches is noticeable. In both situations the officer requests identification information from a driver or passenger as it is reasonably suspected that the vehicle was used in the commission of an indictable offence. Failure to comply with this request may be an offence under the Police Powers (Vehicles) Act 1998. Under the Ombudsman's recommendation the officer would then have to state that the provision of this information is not required if a reasonable excuse for not providing it is forthcoming. The Police Service will implement this legislation so that the officer will not have to say anything but will instead simply question why the person is not providing information.

The Police Service has taken the liberty of assuming that persons are not familiar enough with the law to know that failure to comply with the request may be an offence. They do, however, assume that persons are familiar enough with the law to exclude the important statement that persons do not have to provide this information. The difference is important. People may feel compelled to disclose private information following the surprise of being pulled over by an officer and told that the officer reasonably suspects the vehicle of being used in the commission of an offence, and fear that if they do not do so under any circumstances they may be guilty of an offence, when this is clearly not the case.

In addition, a further recommendation that was disregarded relates to self-incrimination and reasonable excuse. The Ombudsman recommended that Parliament should consider whether self-incrimination constituted a reasonable excuse under the Vehicles Act. Persons required to comply with identification demands may incriminate themselves by providing the required information to the police. Therefore, privilege against self-incrimination may constitute a reasonable excuse not to comply with the police demand for information.

Judgments offered in the District Court in relation to this issue suggested that, if people were to refuse to answer a question on the specific basis that the answer might incriminate them, it would amount to a reasonable excuse under the legislation. The Ombudsman concluded that removing the right to silence and, in particular, the privilege against self-incrimination unclear. The response from the Minister is that those issues should remain a matter for the courts. Relevant court decisions might inform future consideration of that matter. Thus far, the Minister has not been swayed by court decisions relating to this matter. However, it remains an important issue that requires attention.

In relation to the monitoring of roadblocks in pursuit situations, aside from the Ombudsman's review no other mechanism is in place to monitor the actions of officers involved in pursuits where a roadblock is set up. Given the potential dangers of roadblocks, especially in pursuit situations, the Ombudsman notes that there is a need for ongoing specialist monitoring of the use of these powers. South Australian legislation provides for a quarterly tabling in Parliament of basic details of all roadblocks. In New South Wales, all pursuits are currently monitored and governed by the safe driving policy.

I have questioned the Minister's office in relation to the specific nature in which details of roadblocks would be made public. Although I have been assured that they are being made public I have seen no details, despite repeated requests for those details. The original Police Powers (Vehicles) Bill 1998 was the source of much debate in the House in relation to the increase in police powers. It was argued then that police were being given a significant increase in power and that sections of the community would be targeted unjustly rather than the causes of the problems in society being addressed.

Although the Ombudsman notes that there is no power in the legislation to require a passenger to provide identification details, the Ombudsman's report does not recommend that this be included. It is not a recommendation. That is a notable exclusion. The Government is seeking to have this inclusion further strengthen police powers. Civil libertarians have again expressed concern in relation to this bill, just as they expressed concern in 1988. They note that the power of police officers to request persons to provide proof of their identity is unreasonable. They state that, in a normal society, people should not be required to be card-carrying citizens.

In New South Wales indictable offences range from less serious matters, such as applying graffiti, to more serious crimes, such as homicide. While I support the police in investigating these serious matters I question the method they are using to attempt to achieve that end. For that reason I am unable at this time to offer support for this legislation. I would like to thank my excellent researcher, Christine Black, who consulted with the New South Wales Law Society, the Director of Public Prosecutions, the Council for Civil Liberties and the Minister's office on many occasions.

The Hon. JOHN HATZISTERGOS [5.52 p.m.], in reply: I thank honourable members who contributed to the debate on this bill. A number of points arose in debate to which I believe I should respond. The first point, which was raised by the Greens, was that this bill will be used to harass people, in particular, young people. This legislation will apply when police reasonably suspect that a vehicle has been used in connection with the commission of an indictable offence. The insertion of the words "in connection with" is a sensible response to the narrow interpretation that some magistrates have given to the Act. It also addresses one of the Ombudsman's key recommendations.

The amendment makes it clear that the Act applies to getaway vehicles and not just in situations when the use of a vehicle is an element of an offence, such as a ram-raid or a hit and run. We require an indictable offence if we are to be able to activate the provisions to which this bill relates. The Hon. Richard Jones said in debate that other recommendations that have been made by the Ombudsman have not been implemented. That is not correct. In response to the Ombudsman's recommendations the Police Academy has developed modules on the highway patrol education program; the constables education program, relating to policing road safety; and the constables education program, relating to society, law and practice. In line with the review recommendations, real live case studies are now being used to reinforce the training given.

The police handbook, which is available to all police officers, and which is available on the intranet, contains sections of the Act. Further improvements in the Act to police training are under way, in particular, the development of videos showing how to correctly execute search powers under the Act. This form of training is powerful because it is visual. It is also flexible in that videos can be used at any time. The computer-operated policing system is also being altered to reduce the recording errors noted in the Ombudsman's report.

Apart from this legislation a number of issues have already been implemented through the administrative changes to which I have referred. Reverend the Hon. Fred Nile referred to the issue of documentary identification. Let me respond to the issues that he raised. The bill, consistent with legislation that allows police to demand proof of identity from potential witnesses to indictable offences, allows police to demand that passengers of vehicles provide documentary proof of their identity. There can be no penalty for failing to produce documentary proof of identity as there is no legal requirement for people to carry identification documents. However, drivers may be asked to produce their licence if they are questioned whilst driving, rather than at some later time, as it is a legal requirement for people to carry licences whilst driving.

The Government has asked the Attorney General's Department and the Ministry of Police to review current penalty arrangements for all offences of refusing to provide identity information to the police. The Act does not stand by itself. It is one of a range of powers the police have and its use is confined to appropriate circumstances. It is to be expected that some of the powers that the Act confers, such as the roadblock power, will not often be used because of their specialist nature. Police need to have a range of powers so that they can deal with the wider array of circumstances with which they are faced. The Ombudsman's report quotes many police officers who found the Act useful in the course of their duties.

In different circumstances other powers, such as those in the Crimes Act, will be more appropriate. The State needs this Act because of the continued use by criminals of motor transport. Obviously, that will never change. When all that the police have to go on is a description of the vehicle used in a crime, the Act is useful because it allows persons to be questioned because of their link to a suspect class of vehicle. The Act has achieved some successes. I am advised that the powers of the Act have been used on 114 occasions. Since January 2000 the stop and search powers under the Act have been used on a total of 46 occasions. In that period a total of 36 charges have been laid in connection with offences under the Act.

The most common offence was a failure by an owner to identify the driver and passenger of a vehicle at a relevant time. We must remember that the offences that were committed related to a serious crime. The arguments raised by Ms Lee Rhiannon when questioning the usefulness of this proposed legislation cannot be sustained. Ms Lee Rhiannon also said that there was no justification for the Act. The Ombudsman reports that offences that led to the use of this Act included matters such as armed robbery, threatening a person with a firearm and assault and robbery—not insignificant offences. Those sorts of offences do not lend themselves to people sitting around a conference table and talking politely to others about their transgressions to try to resolve what Ms Lee Rhiannon perceived to be a problem experienced by a youth who was involved.

In response to Ms Lee Rhiannon's criticism that more police power results in more abuse, the Ombudsman has advised that no complaints were made to him about the use of the Act since the time of its review. A total of three complaints were made which are referred to in the Ombudsman's report. However, those complaints were not made directly to the Ombudsman. One complaint was withdrawn, one complaint could not be investigated because the claimant left the country and the other complaint was not sustained as there was insufficient evidence. Ms Lee Rhiannon indicated earlier that people will not make complaints because they have to make those complaints to the police. That is not correct. People can make complaints to the Ombudsman.

Part of the legislation will involve continuing monitoring of this Act and these amendments by the Ombudsman. In light of any criticisms that might arise, the Government is prepared to consider such improvements. However, the Government is confident that the Ombudsman will find that these new powers are used responsibly and effectively. In answer to criticisms raised by the Greens and the Hon. Richard Jones, this Act does not alter the law on the right to silence. This is a general legal principle that should not be separately addressed in legislation of this kind. The police will have the power, under this Act, to demand information as to identity and they do not have the power to go beyond that. Obviously, if owners, drivers or passengers claim the right to silence, that will indicate to the police that they warrant further investigation.

The Hon. Richard Jones criticised the Act, stating that there was no ongoing monitoring in publications of the use of roadblock powers. Statistics on the use of roadblock powers under this Act will be included in the Police Service annual report. The Ministry of Police report addressed that issue. No collisions, injuries or deaths have occurred in roadblocks. Any death resulting from roadblocks would be included in the report. Pursuits are already monitored. For those reasons I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

SUMMARY OFFENCES AMENDMENT (MINORS IN SEX CLUBS) AND THEATRES AND PUBLIC HALLS REPEAL 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) [6.01 p.m.]: I move:

That this bill be now read a second time.

As the remarks are lengthy and have already been delivered in the other place, I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The purpose of this Bill is to repeal the *Theatres and Public Halls Act 1908*, and to make consequential amendments to the *Summary Offences Act 1988*.

It is more than ninety years since the Theatres and Public Halls Act was introduced, and it is clear from the debate on the original legislation that its principal object was to exercise control over and improve the condition of licensed halls for the purpose of ensuring the safety and convenience of the public. More particularly, the legislation was designed to regulate the management, erection and construction of theatres, public halls and places of entertainment.

In its original form, the Theatres and Public Halls Act 1908 provided for the licensing and inspection of theatres and public halls to ensure they met certain safety and fire standards. However, since its introduction early last century, most of the provisions of

the Act have been repealed and other more specific legislation dealing with building standards and fire safety have been introduced. The Act therefore no longer serves its principal purpose of protecting public safety against poor construction and fire hazards in theatres and other public buildings.

One rather quaint provision of the Act which has survived the last century is section 27, which allows the Attorney General to issue notices to prohibit or regulate public entertainment if the Attorney is of the view that it is "fitting for the preservation of good manners and decorum to do so". This section has its origin in the Eighteenth Century in England and was introduced by Robert Walpole to prevent political satire of him in plays being staged at the time by Henry Fielding.

In more modern times, the section has been rarely used, and there has been just one occasion in the last decade where the Attorney General has been asked to issue notices.

In November 1998 notices were issued to prohibit the holding of public entertainment, such as striptease and live sex shows, in the presence of minors at four clubs in Kings Cross. The Kings Cross clubs had lost their licences for various offences and were therefore no longer regulated by the provisions of the *Liquor Act 1982*. The *Liquor Act* contains a range of provisions directed to preventing minors from entering or remaining on licensed premises, such as hotels and nightclubs.

A significant limitation of the notices issued under the *Theatres and Public Halls Act* is that they do not give the Police the clear authority to enter unlicensed sex clubs and to remove children and young people from these dangerous environments.

The scheme set out in the *Summary Offences Amendment (Minors in Sex Clubs) and Theatres and Public Halls Repeal Bill 2001* will provide a more effective means of dealing with the problem of children being encouraged to attend live sex shows in seedy establishments at Kings Cross and elsewhere. It will give the Police Service the capacity it needs to act against the owners and managers of sex clubs, and to remove children and young people from these premises.

I turn now to the detailed provisions of the Bill.

Clause 3 provides that the *Summary Offences Act 1988* is to be amended as set out in Schedule 1, and Clause 4 of the Bill repeals the *Theatres and Public Halls Act 1908*. Schedule 1 inserts a new "Part 3A Minors in Sex Clubs" into the Summary Offences Act 1988. Proposed section 21A of this new Part sets out the relevant definitions, including the definition of "live sex entertainment". "Live sex entertainment" is defined to mean live public entertainment of a sexually explicit nature, such as striptease or actual or simulated sexual intercourse (whether or not involving audience participation).

Proposed section 21B provides that a senior police officer may apply to the Minister for premises to be declared a sex club. The Minister may make such a declaration if satisfied that the premises are used solely or substantially for live sex entertainment, and there is no effective prohibition, such as under the *Liquor Act 1982*, to prevent minors entering the premises.

Proposed section 21B (3) states that "The premises declared to be a sex club may include any area that is associated with any part of the premises used for live sex entertainment". This is intended to make it clear that it is primarily the part of the premises used for live sex entertainment which will be covered by the legislation, but that area may be extended to avoid any artificial or arbitrary boundaries.

Proposed section 21C sets out the means for notifying that a declaration has been made. This may be done by a number of methods including publishing the declaration in the Government Gazette or in a local newspaper; or serving notice on the manager of the club.

Proposed section 21D provides that employees, managers and those entitled to any of the proceeds of the operation of declared sex clubs must not permit minors to enter or remain in those clubs. The penalty for doing so is 20 penalty units, or \$2200, and there are limited defences available to people charged with this offence.

Proposed section 21E requires managers of declared sex clubs to continually display notices at each entry point to the clubs, stating that minors are not permitted to enter. The regulations will be able to prescribe the size and content of these notices.

The key amendment to the Summary Offences Act is that which is set out in proposed section 21F. This will allow a police officer to enter a declared sex club without a warrant, whenever he or she believes on reasonable grounds that a minor is present in that club. If the police officer is refused entry, or is unreasonably delayed, the officer will be empowered to break into the premises. Once in, the officer may remove the minor from the premises and if anyone obstructs the police, they will be liable to a penalty of 50 penalty units, or \$5500.

It is important to appreciate that one of the main benefits of this Bill is the conferral on the police of a clear power to remove children and young people from declared sex club premises. This power will help ensure that children and young people are removed from environments where the drug culture and prostitution flourish.

The repeal of the outmoded *Theatres and Public Halls Act*, and its replacement with more specific and targeted offence provisions, is designed to ensure that children are not being allowed into sex clubs, whether or not those clubs are licensed or comply with relevant planning laws. This will not only help us to protect children and young people from exposure to graphic adult entertainment, but also from serious criminal activities such as drug dealing and prostitution.

I commend the Bill to the House.

The Hon. GREG PEARCE [6.02 p.m.]: The purpose of the bill is to repeal the Theatres and Public Halls Act 1908 and to amend the Summary Offences Act 1988. An object of the Theatres and Public Halls Act is to ensure the safety of the public in theatres and halls, including their building, fire safety standards and their ongoing upkeep. Section 27 of the Act allows the prohibition of certain public entertainment based on the

Attorney's view of whether it was fitting for the preservation of good manners and decorum to do so. I think it is safe to say that such words and powers, these days, is a little behind the times.

Indeed, the Opposition recognises that this Act is outdated and in some cases has been superseded. For example, the provisions controlling building and fire safety standards are now contained in other instruments. However, the Act still plays one vital role and that is the restriction of minors in sex clubs. It goes without saying that when it comes to protecting children, partisan politics are pushed aside. The Opposition recognises the important steps that this bill takes to help continue to protect minors from environments such as sex clubs. Several amendments to the Summary Offences Act are outlined in this bill.

Without going into too much detail of the proposed amendments, I will comment on various matters. Section 21B enables senior police to request the Minister to define a specific premises as a sex club. Given that premises can often change their principal use and line of business, police officers are often in the best position to know of those changes. The effect of this section is that the community will be better aware of the location of sex clubs and police will be in a better position to take appropriate action in response.

Section 21C outlines the method for notifying how a declaration is published. Again, I am encouraged by a provision that allows for declarations to be published in local newspapers. Communities have a right to be aware of the presence of premises such as declared sex clubs in their local area. Section 21F allows police officers to enter declared sex clubs without a warrant when there is a belief, based on reasonable grounds, that a minor or minors may be on the premises. Further, police are given authority to break into premises should they be obstructed. If minors are found on site, police officers are given the authority to remove them immediately.

It is argued that until now police officers have had no clear authority to enter sex club premises and remove minors should there be information regarding their presence on the premises. The Opposition is supportive of this amending bill; any measure that stops clubs from encouraging minors onto their premises is both necessary and justified. This bill does not fall into the category of other bills recently introduced by the Government in an attempt to show that it is doing something about crime and gangs in response to problems revealed in Cabramatta.

However, caution is warranted when giving police broader powers, particularly when granted in a variety of Acts or relatively obscure legislation. This caution is especially relevant when Parliament is asked to approve so-called make-work legislation, because this Government is tired, directionless and has no policy initiatives or legislative program other than to convince the *Daily Telegraph* that it meets on the minimal number of allocated sitting days.

In conclusion, the Opposition recognises the necessity of replacing the outdated Theatres and Public Halls Act. While that Act has served this State well over the past 93 years, the amendments to the Summary Offences Act made by this bill better serve the interests and protection of minors.

The Hon. IAN COHEN [6.05 p.m.]: On behalf of the Greens I generally support the Summary Offences Amendment (Minors in Sex Clubs) and Theatres and Public Halls Repeal Bill, which repeals the Theatres and Public Halls Act and replaces it with amendments to the Summary Offences Act. The Theatres and Public Halls Act dealt with building standards and fire safety issues, but other legislation now covers those issues. However, the Theatres and Public Halls Act regulated the small area of public entertainment involving live sex shows and strip shows in the presence of minors.

Normally, a club would be regulated through its licences issued under the Liquor Act, which would automatically ban minors. However, if a club lost its liquor licence there was nothing to stop it from holding a live sex show or strip show so long as no alcohol was served. Minors in that situation would not be banned. The amendment to the Summary Offences Act seeks to regulate a club that has no other regulation—such as a liquor licence—and is holding live sex shows or strip shows. Under this legislation a senior police officer can apply to the Minister to have a club declared as a sex club. Once that occurs, a new power is given to police to enable them to go in and remove a minor if live sex entertainment is occurring.

My main concern with this legislation is where the minor will be taken after removal from a club. For instance, if the minor is being accompanied to the live sex entertainment by a parent or caregiver, what will happen to the minor? Will the minor be left on the street, perhaps in Kings Cross in the early hours of the morning? What if the minor is attending the club alone? Will the police take the minor to the police station, which I believe is totally inappropriate? Or will the minor be left on the street, which is also totally

inappropriate? Where can the minor be safely taken to? I hope that the Minister answers my concerns in his reply. I recognise that there is a need for legislation such as this to deal with minors.

The Hon. JAMES SAMIOS [6.08 p.m.]: The essence of the Summary Offences Amendment (Minors in Sex Clubs) and Theatres and Public Halls Repeal Bill is to repeal the Theatres and Public Halls Act 1908 and make consequential amendments to the Summary Offences Act 1988. Honourable members may be aware that the Theatres and Public Halls Act, as stated by the Minister in the other House, was passed in 1908 to exercise control over the conditions of licensed halls and to regulate the management, direction and construction of theatres, public halls and other places of interest.

The Act provided for the inspection and licensing of theatres and public halls to ensure their compliance with fire and safety standards. However, in view of the introduction of other legislation dealing with those matters, this Act is to be repealed.

It is interesting to note that section 27 of the Act—to which I think the Minister referred—allows the Attorney General to issue notices to prohibit or regulate public entertainment in order to preserve good manners and decorum. This section was rarely used. However, in 1998 notices were issued to prohibit the holding of public entertainment such as striptease and live sex shows in the presence of minors at four clubs in Kings Cross. Those clubs have since lost their licences and are no longer subject to the provisions of the Liquor Act 1982.

One of the difficulties with the Theatres and Public Halls Act, which is being repealed, is that it does not give police clear authority to enter sex clubs and remove children and minors from these environments. The amendment will provide for the removal of children and young people from such premises by police officers, and a number of procedural amendments encompassed by sections 21B, 21C, 21D and 21F introduce penalties in that regard. Specifically, section 21F allows a police officer to enter a declared sex club if he or she believes on reasonable grounds that a minor is present in the club. The officer has the power to break into the premises if refused entry and to remove the minor from the premises. Anyone obstructing that officer will be liable to a penalty of \$5,500. The bill will help to ensure that children and minors are removed from unsatisfactory environments. This is essentially housekeeping legislation that corrects an anomaly and is deserving of support. The Opposition supports the bill.

Reverend the Hon. FRED NILE [6.11 p.m.]: The Christian Democratic Party has some concerns about the Summary Offences Amendment (Minors in Sex Clubs) and Theatres and Public Halls Repeal Bill. We understand that the main purpose of the bill is to protect children and minors, and therefore it must specify where they are not allowed. The bill defines a sex club and confers the power to declare a particular premises a sex club. The bill also contains the definition of what goes on in a sex club, and states:

... declared sex club means premises for the time being declared under this Part to be a sex club.

The bill defines what a sex club is and what goes on there. It also defines in detail live sex entertainment—it is probably the first time such a definition has been made in legislation—and states:

... live sex entertainment means live public entertainment of a sexually explicit nature, such as striptease or actual or simulated sexual intercourse (whether or not involving audience participation).

Apparently there may be actual sexual intercourse and the audience may be involved in that activity. The question is: by seeking to protect minors, has the Government legalised this activity by stating that it is permitted so long as it occurs in a declared sex club? If people are engaged in actual sexual intercourse on stage and invite audience members to participate and a police officer is present—sadly, we no longer have a vice squad, members of which used to attend such premises—could that officer take action against that sex club in light of the activities on stage? According to the way in which this bill is drafted, I do not believe he could. A police officer could enter the club only to check whether minors were present—perhaps upon receipt of a complaint—and then remove any minors found. He could not interfere with activities in the club.

I think that is a fairly serious step on the part of the Government. Bureaucrats and departmental officials have drafted this bill, which seems to go too far. Such activities used to occur in bars and clubs in many American States, and governments were forced to introduce legislation to wind back the incidence of total nudity and activities such as sexual intercourse on stage and lap dancing—which involved naked women sitting on patrons' laps. I am concerned that this bill might permit those activities. I accept that the Government's main objective is to protect children, but it may have opened Pandora's box in the process.

The bill repeals the Theatres and Public Halls Act 1908. It is old legislation and people have called for its repeal. However, we are concerned that the Government has not addressed some of the issues outlined in that Act—they are certainly not in this bill, which is an open door. The Act maintained certain entertainment standards that are no longer controlled by legislation. On the one hand, we have given police the power to ascertain the identity of people suspected of committing a criminal offence while, on the other hand, we have perhaps taken from the police other powers important to maintaining community standards in our society. We must not allow criminals to decide the quality of entertainment in our State. The Baptist Church does not run sex clubs; those activities are usually run by criminals—Mr Vice, Mr Sin and so on. Are we giving them a blank cheque to do virtually whatever they like? This is a serious matter: if we vote against the legislation it appears that we do not want to protect minors. I raise this point with the Government and urge it to consider it carefully. The bill may require some polishing and amending to make it clear that the Government has not removed the power of police to take action against such activities.

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) [6.17 p.m.], in reply: I thank honourable members for their support for the Summary Offences Amendment (Minors in Sex Clubs) and Theatres and Public Halls Repeal Bill, which the Hon. James Samios described as a housekeeping measure. This is an important bill. Reverend the Hon. Fred Nile raised some more exotic issues, but the early part of the debate focused on the fact that this legislation seeks to replace provisions in previous Acts that protected children from activities in sex clubs, which were defined according to the late twentieth century and early twenty-first century vernacular. Members are behaving responsibly by supporting the Government's determination to secure ongoing protection for children and minors. I am reminded of the comments by a well-known radio personality who said that perhaps a war on indecency is required in modern times.

That leads me to the comments of Reverend the Hon. Fred Nile. I am happy to raise with the Attorney General and the Minister for Police the issues that the honourable member brought to the attention of the House. However, the criminal activities to which he referred would remain subject to police action and criminal prosecution. Criminal activities will not receive any new protection from this bill when enacted. Reverend the Hon. Fred Nile's concerns—though interesting points of criticism—are well removed from the practicalities of this legislation. It is about protecting children from activities in sex clubs, and it will succeed in that objective.

Reverend the Hon. Fred Nile: It might be an unintended consequence. That is my point.

The Hon. JOHN DELLA BOSCA: There is a consequence that requires a definition of activities in sex clubs. I am sure the general definitions of those activities would not mean necessarily that criminal activities associated with those activities would be sanctioned by the bill. I have done my best to respond to those concerns, but I will take them up with the Attorney General and the Minister for Police, and take further appropriate action if required. In response to comments by the Hon. Ian Cohen, it is usual with criminal cases that police response will be determined by the circumstances of each case. Police have a discretion whether to exercise their powers when an offence is detected. For example, if the minor in question is an infant and the parent is an employee of a declared sex club—in this case a cleaner rather than a client, as Reverend the Hon. Fred Nile referred to—it would be most unlikely that police would remove the infant. However, if an 8-year-old were on premises used for child prostitution or pornographic purposes as defined in section 91G of the Crimes Act and under the terms of the Children and Young Persons (Care and Protection) Act 1988, one would assume the police would form the view that the child is at immediate risk of serious harm or is in need of care and protection.

The Children and Young Persons (Care and Protection) Act 1988 sets out a comprehensive regime for the emergency protection of children. According to this Act, when a child is removed by police, the child must be kept separately from any persons detained for committing offences or any persons who are on remand until the child is placed in the care and protection of the Director-General of Community Services. When a child has been removed from the premises the director-general is required to apply to the Children's Court at the first available opportunity for an appropriate care order. The proposed amendments will supplement the existing child protection regime by ensuring that owners and operators of sex clubs are penalised if they allow children to enter those premises. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

[The Deputy-President (The Hon. Henry Tsang) left the chair at 6. 22 p.m. The House resumed at 8.30 p.m.]

PUBLIC FINANCE AND AUDIT AMENDMENT (AUDITOR-GENERAL) BILL**Second Reading**

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [8.30 p.m.]: I move:

That this bill be now read a second time.

I will seek to incorporate most of my second reading speech in *Hansard*. However, I will make some comments additional to those given in the other place. I emphasise that the Public Finance and Audit Amendment (Auditor-General) Bill has never been about giving the Auditor-General a blank cheque to write all the powers that he or any Auditor-General may want. This Parliament should not give any one person the right to unchecked power. The Parliament should not allow any independent watchdog to write its own powers unchecked by careful parliamentary scrutiny. The bill addresses the problem with the Auditor-General's reporting powers that arose from a Crown Solicitor's advice.

The Hon. John Ryan: That is not why the Crown Solicitor's advice came into being.

The Hon. MICHAEL EGAN: I think that is well known.

The Hon. John Ryan: You asked for it.

The Hon. MICHAEL EGAN: I asked for it in relation to a particular report of the Auditor-General. The advice came back, and it not only confirmed that my view on a particular matter was correct from a legal point of view, but it also called into question many of what we assumed were the Auditor-General's reporting powers until then. The Government undertook to introduce legislation and received legal advice to demonstrate that it had done so with this bill. No-one has disputed that the bill achieves what the Government promised it would achieve. Indeed, this bill will significantly expand the reporting powers of the Auditor-General.

In those circumstances, it is particularly disappointing that the Opposition and some members of the crossbench have foreshadowed that they will seek to advance a whole range of other issues that have nothing to do with the key issue of the Auditor-General's reporting powers. In the course of preparing this bill, the Government considered a range of other matters raised by the Auditor-General, many of which are included in this bill. However, addressing the problem of the Auditor-General's reporting powers should remain the focus of the bill. This is not the time that the Opposition and the crossbench should introduce amendments that could jeopardise the passage of this bill.

The amendments that had been foreshadowed are simply not acceptable to the Government. The amendments would give the Auditor-General essentially the role of the Opposition. These amendments would politicise the office of Auditor-General and would, in effect, see the Auditor-General do the job of the Opposition. The Government will not agree to distort the core functions of the Auditor-General because of any opportunism, at worst, or lack of appreciation of the Auditor-General's role, at best.

In the meantime, the Government has introduced this bill to ensure that the Auditor-General's important contribution to public accountability is not compromised. The Government has made it clear that it wants to restore the reporting powers of the Auditor-General. It will be most unfortunate for the Parliament and the people of New South Wales if we are prevented from doing so by inappropriate Opposition and crossbench amendments. I seek leave to incorporate the balance of the second reading speech, which is the speech as read in the other place, into *Hansard*.

Leave granted.

In the last weeks of the Budget Session earlier this year, the Auditor-General released Volume Three of his report to Parliament for 2001. It included a copy of advice provided by the Crown Solicitor relating to the Auditor-General's power to report to Parliament.

The Crown Solicitor advised on the Auditor-General's power to report on the achievement of fiscal targets under the *General Government Debt Elimination Act 1995*. The Crown Solicitor construed the Auditor-General's reporting powers narrowly.

The Premier and the Treasurer stated that the Government would deal with the issues raised by the Crown Solicitor's advice at the start of the Spring Session.

This Bill solves the problem arising from the Crown Solicitor's advice by extending the powers of the Auditor-General to report to Parliament.

The Bill amends the reporting power in section 52 of the *Public Finance and Audit Act 1983*.

Currently, the Auditor-General may report on any matter 'arising from audit'. The Bill will replace this with the power to report on any matter that 'arises from or relates to' the exercise of the Auditor-General's functions.

This problem arose from the Crown Solicitor's advice. The Government has obtained further advice from the Crown Solicitor to ensure that the Bill solves the problem.

I table the Crown Solicitor's advice.

I draw attention to the Crown Solicitor's conclusion that 'the proposed amendment will significantly increase the matters upon which the Auditor-General may report'.

The Crown Solicitor also says that the proposed amendment 'would expand significantly and appropriately the matters upon which the Auditor-General may report'.

The Crown Solicitor advises that 'provided some relationship exists between the particular matter and the exercise of any of his functions, the Auditor-General will be permitted to report on it'.

The Government has also obtained a report from the Parliamentary Counsel on this aspect of the Bill.

I table the Parliamentary Counsel's report.

The Parliamentary Counsel reports that 'the amendment is intended to provide the Auditor-General with the widest possible power to report (consistently with the matters being reported having some direct or indirect relationship to the Auditor-General's functions)'.

As promised, the Government has introduced this Bill to address the problem arising from the Crown Solicitor's previous advice. The Crown Solicitor's further advice and the report of the Parliamentary Counsel demonstrate that this Bill will solve the problem.

Indeed, the Government has gone further than simply dealing with this issue for the future.

The transitional provisions in this Bill ensure that the Bill is given retrospective effect. Those provisions will validate anything done by the Auditor-General before the commencement of the Bill that would have been valid if the Bill had been in force.

This particular provision, giving the Bill retrospective effect, was included in the Bill following a question the Honourable the Reverend Fred Nile, MLC asked at a Budget Estimates hearing. The Government acknowledges Reverend Nile's contribution on this aspect of the Bill.

This Bill addresses a number of issues in addition to the Auditor-General's reporting powers. These arise from matters the Auditor-General has raised with the Treasurer. I turn to them now.

The Bill proposes to introduce a new provision relating to the office of Auditor-General. For the first time, the Bill specifically declares that there is to be an Auditor-General for New South Wales.

This provision also sets out the functions of the Auditor-General.

The Bill includes three new functions.

First, the Auditor-General will have the function of providing audit or audit-related services to Parliament at the request of both Houses of Parliament.

Second, the Auditor-General will have the function of providing audit or audit-related services to the Treasurer at the request of the Treasurer.

Third, the Auditor-General will have the function of doing anything that is incidental to the exercise of his functions.

The first two new functions will ensure that the Auditor-General may be asked by Parliament or the Treasurer to carry out particular audits or audit-related services. These new functions will be particularly useful where the audit or audit-related services are not covered by the Auditor-General's specific audit powers.

The *Public Finance and Audit Act* currently includes a restriction on the Auditor-General questioning the merits of Government policy in connection with a special audit. In light of the significant expansion of the Auditor-General's reporting powers, the Bill extends this restriction to the Auditor-General's functions and reports generally.

In addition to auditing the Public Accounts and the Total State Sector Accounts, the Auditor-General has power to conduct special audits.

These enable the Auditor-General to conduct an audit to determine whether an authority is carrying out its activities effectively, economically, efficiently and in compliance with all relevant laws.

In keeping with industry practice, the Bill renames 'special audits' as 'performance audits'.

The Bill makes it clear that the Auditor-General may conduct a performance audit in relation to a particular issue across a number of agencies.

The Bill also makes it easier for the Auditor-General to report on such cross-agency audits. It does so by enabling the Auditor-General to ask the Treasurer to nominate one authority and one Minister to whom the Auditor-General must provide a draft report. This will avoid the need for the Auditor-General to provide a draft report to more than one authority or Minister in cases where such reporting is not warranted.

Currently, the Act requires that the Auditor-General provide a summary of his findings and recommendations to the head of the authority and the Minister for at least twenty-eight days before making his report. The Bill will enable the Auditor-General to make his report more quickly if the head of the authority has made any submissions or comments he or she wishes to make.

The Bill also requires that the Auditor-General provide a copy of the draft report of a performance audit to the Treasurer, in addition to the responsible Minister and the head of the authority. This will ensure that, in appropriate cases, the implications of the Auditor-General's findings and recommendations are considered more generally and not just in relation to the particular authority audited.

The Bill also makes amendments in relation to protected disclosures that can be made to the Auditor-General.

Currently, the Auditor-General may deal with a protected disclosure only by conducting a special audit.

The Bill removes protected disclosures from the special or performance audit provisions of the Act. Instead, the Bill will authorise the Auditor-General to deal with a complaint in any manner the Auditor-General considers appropriate.

Currently, the Auditor-General is protected from personal liability for acts done in good faith. The Bill extends this protection for the Auditor-General to cover omissions as well as acts.

The Bill also includes an additional exception to the secrecy provisions that currently apply under the Act. This exception will enable the Treasurer to authorise the Auditor-General to disclose information for a due diligence process relating to the sale of a government undertaking.

The Bill also makes a minor amendment to section 35 of the Act to ensure that, where the Auditor-General carries out an inspection or examination under that section, the Auditor-General will be able to recoup his costs.

This Bill delivers on the Government's promise to address the problem with the Auditor-General's reporting powers that arose from the Crown Solicitor's advice.

The Government has never reduced the reporting powers of the Auditor-General in any way.

With this Bill, the Government will significantly expand the reporting powers of the Auditor-General.

I commend the Bill to the House.

I table the Crown Solicitor's advice and the Parliamentary Counsel's report referred to in the second reading speech.

Documents tabled.

The Hon. JOHN RYAN [8.35 p.m.]: The role of the Auditor-General is very important in this State as it is in any State. Some people believe that one of the reasons that the Kennett Government ran into difficulty in Victoria was that it decided to play around with the powers of the Auditor-General, in fact to gag the Auditor-General. With great respect, I put to the House that for some time the Treasurer has attempted to gag the Auditor-General. Honourable members know that this bill has come into being because the Treasurer sought advice as to whether the Auditor-General had powers to carry out a particular function, that is, to report to this House, in fact to this Parliament, the progress that the Government had made in implementing its General Government Debt Elimination Act.

The Treasurer was upset that the Auditor-General had the temerity to tell this House and the Parliament of the progress that the Government has made. The Treasurer said that the Auditor-General is doing the job of the Opposition. My response to that is to say that I had some reservations when the Auditor-General was first appointed, not because I knew anything about him, because I knew nothing about him. My concern was that as he was appointed from Treasury, I wondered how he would then take on the job of essentially auditing and checking Treasury. I thought that that may have been a potential conflict of interest. However, the appointment of the Auditor-General is one of the finest appointments made by the Treasurer. He has been an outstanding Auditor-General; he has attempted to inform and keep this Parliament informed in an outstanding fashion.

The Hon. Michael Egan: A very good appointment, in other words.

The Hon. JOHN RYAN: Indeed. For members of this Parliament who are interested in the financial affairs of this State the Auditor-General has done a sterling job in reporting regularly to this Parliament about

the affairs of various government instrumentalities and the Government as a whole. He has reported in a manner devoid of the mumbo jumbo that normally makes Auditor-General reports unintelligible to those who do not have a degree in economics or high finance. His reports are easy to read and he makes no attempt at grandstanding.

To the best of my knowledge the Auditor-General has never given a press conference or made reports in the media. He writes his reports, they are tabled in the House and they are available for honourable members to read. He has not been a grandstander; he has done his job in an extremely professional manner. Unlike many other Auditors-General, none of whom have not distinguished themselves in my view, he has genuinely attempted to work out whether the services he provides to this Parliament are appropriate in meeting the needs of members.

I remember participating in a face-to-face survey with members of his staff who were trying to work out whether the material produced from that office was able to be used by members of Parliament. The Auditor-General understands that his product is, by and large, used by the Parliament and he has made sure that his many reports are intelligible and understood by members of Parliament. In the view of the Treasurer, the great sin of the Auditor-General was that last year he produced a report that went through, piece by piece, the Government's achievements—or lack of achievements—in the General Government Debt Elimination Act. The Auditor-General told the Government the unpalatable truth; that it is spending money at a much faster rate than it can afford to raise in the long term.

The Treasurer tells us that taxes have not been increased, but the Auditor-General informed members that the tax take has increased monumentally. The Auditor-General had the temerity to warn Parliament that, while there is nothing wrong with what the Government is doing—it was elected by the people of New South Wales to spend money as it sees fit and it will have to account to them for that expenditure—if the current economic environment is not sustained in the long term, the Government will have either to cut expenditure or to increase taxation. That was the sin the Auditor-General committed: he informed us about the long-term financial situation in New South Wales. This so annoyed the Treasurer that he felt compelled to write to the Solicitor General and receive advice as to whether the Auditor-General had the right to produce such reports.

The Hon. Michael Egan: That is a complete misrepresentation.

The Hon. JOHN RYAN: The Treasurer questions my assertion. I do not think it is a coincidence that the Treasurer's letter to the Solicitor General—which was published in full in the Auditor-General's report—bears the date that appears in volume 1 of the Auditor-General's report of March 2000. I have little doubt that that report annoyed the Treasurer: he was found out and could no longer get away with his usual mumbo jumbo and obfuscation. He was forced to confront the facts. The Treasurer decided that he would ascertain whether it was the Auditor-General's role to inform us in that regard. The Treasurer is trying to convince us that we are in grave danger of giving the Auditor-General too much power. Too much power to do what? The Auditor-General can only write a report. I doubt that he would bother to become involved in politics as I suspect that, if he did, his office would be denigrated. He has enormous power but it must be used properly and wisely—which is how most Auditors-General have exercised their power to date. That is the Auditor-General's only power. If he had the temerity to become involved in political debate and reported inaccurately, I have no doubt that the Treasurer—harnessing all the resources of Treasury—would quickly tell us about it. Parliamentarians would then be able to read the Auditor-General's report and the Treasurer's response to it. The Treasurer has not often come into this place and criticised reports of the Auditor-General, so I suspect that they have passed the test for accuracy and political credibility—if that were ever in question. I believe the Auditor-General has demonstrated that he is totally non-partisan.

Opposition members will join the crossbenchers in supporting amendments to the legislation. We support the legislation as far as it goes but we will introduce amendments drafted by the Auditor-General—we did not dream them up ourselves—in his suggested bill about which he reported to Parliament at the end of last year. The Treasurer finds offensive the suggestion that the Auditor-General will be responsible for promoting accountability in the public administration of the State. What a dangerous suggestion! I defy the Treasurer to explain, chapter and verse, how promoting public accountability could be so dangerous.

The Hon. Michael Egan: It is a limitless mandate.

The Hon. JOHN RYAN: To do what? To report? To report, the Auditor-General must have the facts.

The Hon. Michael Egan: A limitless mandate to report on matters where the Audit Office has no expertise at all.

The Hon. JOHN RYAN: The legislation makes it clear that the Auditor-General—

The Hon. Michael Egan: They are not constitutional, legal or economic experts; they are accounting and auditing experts.

The Hon. JOHN RYAN: No-one suggests that they are the last word. Auditors-General are members of the human race and, as such, they will make mistakes. The first time an Auditor-General makes a mistake I am sure he will be corrected by the Treasurer of the day—I hope that in the near future it will be a Treasurer in a Liberal administration. I am not frightened by the constraint of having an Auditor-General who promotes public accountability. If we do not believe the Auditor-General is obliged to promote public accountability, we are saying that the public does not have the right to know and that the Government has the right to obfuscate and refuse to give the public the facts. I do not believe the Government has that right.

I believe the Auditor-General should have the right to say that the Government's claims are correct to a point but that we must consider other facts also. If the Auditor-General does not have that right, who will? It is not as though the Treasurer will open the Treasury books and give Opposition members the opportunity to examine that information. Only the Auditor-General has the right to demand information without question. Honourable members know that I take great interest in the affairs of the Department of Fair Trading, but I cannot contact the department without first asking the Minister—and then I receive only written answers. If I do not ask the right questions, I do not get the right answers. That sort of nonsense can sometimes continue for months when I am seeking to discover only something trivial about one small area of government administration that is scarcely politically controversial. The Auditor-General is the one person who can walk into Treasury and demand to look at the books and reveal what they say.

The Treasurer is worried that there will be conflict occasionally. The Auditor-General must ensure that that conflict is not partisan; it is a matter of personal integrity. We cannot suggest that the current Auditor-General cannot be trusted with the responsibility of promoting public accountability. If the Government disagrees with a statement by the Auditor-General, it can say that it should be otherwise and leave it to the public to decide. The Auditor-General has no authority apart from the right to look at the books and to report on what he sees. I do not find that dangerous.

The powers that we are seeking to give the Auditor-General are already established in statute in the Australian Capital Territory and other Australian jurisdictions. We must accept that that is the future standard. If I were sitting on the Treasury bench and the Treasurer were in opposition, I have no doubt that he would sponsor and support the same amendments that we are discussing today. The Auditor-General has done well in promoting public accountability. He recently published an excellent handbook providing guidance not only to members of Parliament but to government departments about producing annual reports. Annual reports are not just financial documents; they contain important information regarding outputs. On any other occasion I am sure the Treasurer would claim that cash outputs are more important than cash inputs—he would be the first to tell us that that is the way of the future. If the Auditor-General does not have the capacity to promote public accountability—even about outputs—members of Parliament and the public will find out only as much as the Government wants them to know, and nothing more.

The Government will publish only as much information as it sees fit. It can play plenty of tricks. For example, it could publish graphs instead of data tables and change its reporting methods each year so that it is impossible to make annual comparisons. Only the Auditor-General has the capacity to ensure that governments provide accurate information. If we do not have someone who can blow the whistle, the State will be the worse for it. We do not need to go far into the history of this State to remember the Wran Government—a time when nobody knew about anything. That Government was sustained for so long—despite its corrupt conduct—because no-one could discover the facts.

The Hon. Michael Egan: What?

The Hon. JOHN RYAN: I do not think the Wran Government ran screaming to the media to report that one of its Ministers was accepting bribes from the early release scheme.

The Hon. Michael Egan: We prosecuted him, you silly man.

The Hon. JOHN RYAN: You did eventually when you were shamed into it. You even considered paying his bills.

The Hon. Michael Egan: We instituted the inquiry. Remember that?

The Hon. JOHN RYAN: When you were forced into it. I do not want to go too far back in history, but I remember the days of the Wran Government. A public scandal would be aired on the ABC, for example, and then there would be a police inquiry. There would be no open, judicial inquiry with public terms of reference. Public servants who were told what to do and say would report to the Government and it would release as much of the inquiry as it saw fit. We had open inquiries only when the Wran Government knew what the outcome would be; otherwise it had to be dragged into the open kicking and screaming. It is rewriting history to suggest that the Wran Government was a picture of open government; it certainly was not. It did not have a freedom of information Act or an open and accountable Auditor-General—it did not want them.

The Hon. Peter Primrose: What about Askin?

The Hon. JOHN RYAN: I am not suggesting for a moment that this side of the House has a monopoly on political accountability. It does not. It is in the interests of all parliamentarians—I sincerely hope the crossbench members are listening—that anyone is able to blow the whistle on anyone. No-one has a mandate to expect that he or she is able to govern without the facts being known. That is why the Government is terrified. We are suggesting also that the Parliament should accept that either House of Parliament can ask the Auditor-General to inquire into any matter. The Government wants the two Houses of Parliament to vote on whether to ask the Auditor-General to conduct an inquiry. That means that unless the Government agrees to an inquiry it will not happen. The government of the day usually has a solid and substantial majority in the lower House so it will be able to block any inquiry that a House of Parliament might want. So, we will put up with political obfuscation on some issue that we believe ought to be the subject of inquiry.

One of the virtues of the Legislative Council is that it cannot block the budget but it can and ought to have very wide powers of inquiry relating to expenditure. The Legislative Council should have as a weapon the ability to refer a matter to the Auditor-General for report. How dangerous would it be for this House, in which the Government is likely never to have a majority, to have the capacity to ask the Auditor-General to blow the whistle and report? I cannot see anything wrong with that; only the Carr Government sees something wrong with that approach. The Treasurer is worried that the Auditor-General will become the commentator general. I doubt that. To date he has not become such. He has been a person of great integrity. If for some reason the Auditor-General cannot be trusted with the vast powers of reporting and encouraging public accountability, it is a matter for the Government to seek to change that position. It will not be beyond the Government's capacity to introduce legislation to address a matter should proceedings go too far. That would be quite easy to do.

The Treasurer would rather that we start with very narrow powers of inquiry. All the Treasurer wants the Auditor-General to be able to do is make sure that if the Government said it was going to spend money in some particular place, that was all it did. In other words, the Treasurer wants the Auditor-General to check compliance—not that the Government might have complied but there might be a wider and more important story that needs to be told to the public of New South Wales that is beyond simple and mere compliance. These days lies and damn lies are able to be told with figures. Sometimes it is necessary to have prose and explanation around those figures. If honourable members are to be conned in any way by the Treasurer into suggesting that we should not have an Auditor-General who does not promote public accountability, frankly they are not doing their job as members of Parliament. The Parliament ought to be a place that welcomes open inquiry.

The Treasurer's argument that the Auditor-General will become a quasi Opposition is a furphy. The only thing he is worried about is that to date the Auditor-General by and large endorses much of what the Government does. Rarely is the Government bothered by a report from the Auditor-General. Unfortunately, the Treasurer was very upset with the inquiry and report the Auditor-General made on the Debt Elimination Act. I believe one of the best things the Auditor-General did was to report on the sustainability of the Government's spending pattern. The people of New South Wales have a right, and deserve, to know whether the government of the day is spending in a manner that is sustainable into the future without increasing taxation or imposing some drastic cut to future expenditure should the economic situation suffer a downturn. We all know about the many reports, definitions and re-definitions of the term "State debt". The Treasurer can probably cite a dozen definitions—I do not understand them all—but without someone like the Auditor-General to provide guidance and help, I would find that debate difficult to enter. I found the Auditor-General's advice and capacity to report on that issue extremely instructive.

The greatest power of any government is the power to spend money. We spend hours discussing proposed legislation, much of which never gets activated because people either do not do the things that bring

about penalties or, by and large, they operate well within the limits provided by the proposed legislation. Legislation is not always that powerful, but one thing the Government can do to dramatically change New South Wales is how it spends the resources forwarded to it by the taxpayer. The Government can make our health system good or wreck it just by expenditure; it can make our Police Service good or it can starve it of resources and wreck it just by the way it manages expenditure; it can make our education system suitable to the needs of our young people and schools, or it can wreck it by starving it of funds. The budget is the most powerful tool of the Government. The greatest weapon that members of Parliament have is the capability to determine whether the budget papers—all of them; not just the rows of statistics, but also the explanatory detail—give a true and accurate picture.

The Opposition supports the bill but believes that it does not go far enough. Not one amendment that the Opposition will move in Committee was originally published and supported by the Auditor-General; he has not entered into public debate on this bill. He has allowed his report to speak for itself and has not entered into the debate since. That should dispel any doubts anyone may have about the integrity of the Auditor-General. The Auditor-General can be well trusted with that sort of power. I do not find it dangerous that he would promote accountability or that either House of Parliament could refer a matter to him. A couple of other suggestions will tidy up the proposed legislation, and I cannot understand why the Treasurer would even quibble with them. For example, a Minister ought to be able to refer matters to the Auditor-General without necessarily seeking the permission of the Treasurer.

In an operating Cabinet Government it is unlikely that a Minister will ever refer a matter to the Auditor-General without first informing the Treasurer, but circumstances do arise when Ministers want to get to the bottom of difficulties they face and they will want to be able to communicate to their departmental officers that they have the authority to refer a matter to the Auditor-General to obtain facts. In one respect the realities of government might render this proposal impractical but, conversely, they do not render it impractical for a Minister to say to departmental officers, "That's a very interesting report you have given me about this issue. I want to refer this to the Auditor-General" without the Minister having to gatecrash the Treasurer's office to explain. A Minister should be able to do that and we believe that good, open and accountable government requires that such an approach be supported. I cannot understand why the Treasurer would not support that proposal.

The Opposition supports and applauds the amendments to be moved by crossbench members that are similar to the amendments we will seek to move. The simple question we need to ask ourselves is whether we believe in public accountability. The reasonably modest amendments that the Opposition will move should receive the overwhelming support of the Chamber. I suspect that if some Government members were not constrained by the caucus vote, they might support the comments of the crossbench and the Opposition. I ask them to stand up for democracy in this State and give support to an unfettered and unhindered Auditor-General who can blow the whistle as he sees fit.

The Hon. HELEN SHAM-HO [8.57 p.m.]: I support the Public Finance and Audit Amendment (Auditor-General) Bill, which will clarify the reporting powers of the New South Wales Auditor-General and for the first time will state the Auditor-General's functions. As honourable members know, the Crown Solicitor gave advice to the Government in July 2000 on the Auditor-General's reporting powers. The Treasurer referred to that in his second reading speech and tabled that advice. The advice specifically related to comments made by the Auditor-General in volume 2 of his Report 2000 on the General Government Debt Elimination Act 1995. However, the Crown Solicitor's advice appeared to apply to the Auditor-General's reporting powers across the board. The Auditor-General stated in volume three of his report to Parliament for 2001:

The Crown Solicitor's opinion, in effect, is that my ability to report on "matters arising from audit" (section 52 of the Act) should be interpreted strictly, referring only to those matters that arise directly from the audit process.

In August I was contacted by the Auditor-General, Mr Bob Sendt, in regard to volume four of his report to Parliament for 2001. He was concerned about his reporting powers as interpreted by the Crown Solicitor. Subsequently, on 28 August Mr Sendt said in a letter:

My difficulty is that I may wish to include commentary in Volume Four that the current legislation, as interpreted by the Crown Solicitor, would not allow. However, I would be prepared to present my report if I had widespread parliamentary support that some backdating provision in the amending bill would be acceptable.

This amending bill is now before the House. Although I have reservations about retrospective legislation, in this case I support it because it will allow the Auditor-General to do his job. The Hon. John Ryan previously

outlined the good work done by the Auditor-General, and I agree with him. In volume three of his report to Parliament for 2001 the Auditor-General stated:

On my understanding of the Crown Solicitor's opinion, much of what has traditionally been included in Auditor-General's reports to Parliament, at least since 1983 when the Act in its current form was passed, could now be deemed outside my legislative mandate.

The bill will resolve this concern. The role of the Auditor-General helps to promote public accountability of government. In some ways the Government's bill limits the power of the Auditor-General to have such a role. Based on the Crown Solicitor's advice the Auditor-General will have the power to report on any matter that arises from or relates to the Auditor-General's functions, rather than the current power to report on any matter arising from audit. When the Auditor-General, Mr Sendt, contacted me in August he also explained his concerns with the bill in relation to this issue. The Auditor-General wants his functions to be more outcome based because he is concerned about the public accountability role of the Auditor-General. In his statement of 18 September Mr Sendt stated:

Issues of accountability, governance and probity are increasingly being accepted as appropriate issues for Auditors-General to address.

The Hon. John Ryan referred to that issue earlier, which addresses the up-to-date, current or future role of Auditors-General. Members of this Parliament should be concerned that New South Wales does not fall behind other jurisdictions on this issue. I will give the example that was given by the Hon. John Ryan. In the Australian Capital Territory the first function of the Auditor-General under section 10 (a) of the Auditor-General Act 1996 is to promote public accountability in the public administration of the Territory. I understand that the Greens will move an amendment to include a similar provision in this bill, which I will support. I hope the Government will also support it. The Hon. John Ryan persuasively addressed this issue. For the first time the bill states the Auditor-General's functions by inserting section 27B into the bill. Section 27B (3) (b) states that one of the functions of the Auditor-General is to provide any particular audit or audit-related service to Parliament at the joint request of both Houses of Parliament.

This is an important new function because it will allow Parliament to call on the Auditor-General to undertake whatever audits the Parliament considers to be appropriate and necessary. However, I question why it must be the joint request of both Houses of Parliament. Why not only the upper House or the lower House? I am aware that the Greens and the Democrats have these concerns, and I am sure that other crossbench members have the same concerns. Clearly, as the Government is in the majority in the Legislative Assembly it would be able to block effectively a request for an audit. This goes against the public accountability of government. I will support the amendment that will enable either House of Parliament to make a request for an audit or audit-related service to the Auditor-General. I note that an amendment by the Coalition will include parliamentary committees. I have no problem with that, either. I will probably support that amendment. I support the bill.

Ms LEE RHIANNON [9.04 p.m.]: This bill acts to correct a serious problem in the Auditor-General's powers which became apparent in advice from the Crown Solicitor. To that extent the Greens support the bill. Although there may be some argument that the Crown Solicitor was being unnecessarily narrow in his interpretation of the existing Act, it is abundantly clear that the extreme constraints imposed on the Auditor-General should be removed. The current situation highlights the important role of the Auditor-General in ensuring that the actions of government live up to the highest standards of probity and accountability. Because of the failings of our democratic process to hold elected officials responsible and accountable for their actions, in many senses the Auditor-General has become the guardian of the public interest in financial dealings of government. Where government and private enterprise interact there are grave dangers of the public interest being lost.

The Government is planning to enlarge the field of play for privatisation and corporate control of public assets and activities. The New South Wales Government's green paper, published in November last year and entitled "Working with Government: Private Financing of Infrastructure and Certain Government Services in New South Wales", made the Government's preferences for privately funded infrastructure abundantly clear. The Greens condemn it as an abandonment of the Government's obligations to the private sector, and we will continue to campaign against it. The importance of a strong, well-resourced Auditor-General with wide-ranging powers is illustrated by the push for private owners and operators in the physical infrastructure of our public schools. We were very concerned to note that in his July visit to the United Kingdom the Minister for Education and Training spent at least eight of his 12 meetings discussing public-private partnerships in schools.

The intention is clear, to insert private operators at the most sensitive and important end of government operations in New South Wales: the public education system. The United Kingdom and Canada have had highly

adverse experiences in this regard. Those experiences raise a wide range of concerns, including value for money and ensuring that the physical environment is designed and operated to ensure that schools can continue to deliver the highest quality public education rather than the maximisation of the private operator's profits. We cannot expect the Government to assess these issues with any semblance of independence or openness. A second and important reason for enlarging the powers of the Auditor-General is that the business interface between government and private enterprise is becoming increasingly complex and increasingly beyond the grasp of even the most well-informed citizens.

The level of expertise and the time required to follow so many of the crucial decisions made by government, many of which affect the long-term health of our society and our economy, effectively shut out the citizen watchdog. In part this results from deliberate acts of obfuscation by governments to hide their dealings, but it is also a consequence of growth in the size and complexity of government. A further factor arguing for a strong and independent auditor is the changed nature of the political process, particularly with respect to the relationship between the Government and the media, the concentration of media ownership, the changed nature of big party politics and the increasingly common objectives of the Labor Party and the Coalition. The result of each of these is a reduced ability and willingness of Parliament to respond to the excesses of Executive Government. Finally, the politicisation of the public service, starting with the outrageous and unconscionable behaviour of the Greiner Government and continued by its successors, has diluted the culture of professionalism among senior public servants, replacing it with a system of second-guessing and political responsiveness.

It is a matter of great regret that the people of this State can no longer look to the senior ranks of the bureaucracy to defend their interests against the machinations of the Executive Government. Only an independent Auditor-General can realistically and reliably supply the overview and regulation of the activities of government that can protect the public interest. The extraordinary value of the independence and powers of the Auditor-General can be understood by recalling the lengths to which former Victorian Premier Jeff Kennett went to destroy the office in that State, starting in late 1997. It is worth recalling. In 1998 Kennett's Victorian audit model became law. It hived off many of the activities of the Auditor-General and gave them to the private sector, where the independence of the audit functions cannot be guaranteed. Many observers believe that the downfall of that Government in large measure resulted from this episode. I was pleased to note that other honourable members have acknowledged that.

The Hon. Michael Egan: What has that got to do with this bill?

Ms LEE RHIANNON: It is highly relevant to what we are discussing at the moment, Treasurer.

The Hon. Michael Egan: We are not restricting the Auditor-General's powers. This is a bill to widen them.

Ms LEE RHIANNON: You are, and that is why we will move amendments. You are most definitely attempting to do so. Your proposal that both Houses of Parliament have to sign off on it is clearly an attempt by the Government to have control, and the Treasurer knows that. It is most definitely a restriction. If the Treasurer cannot be honest about that, it shows how low he has sunk. Tony Harris, a former New South Wales Auditor-General and now a journalist with the *Australian Financial Review*, observed in October 1999, during the last days of the Kennett Government:

Jeff Kennett could have been more than a caretaker Premier of Victoria today, had he cared more about democracy than he showed. Instead he disdained the process that tried to make his government properly accountable to the public. The electorate could only hold him accountable at the general election and it did.

The Hon. Michael Egan: You're not a great democrat. You believe in the dictatorship of the proletariat!

Ms LEE RHIANNON: The Treasurer's interjections—and I acknowledge his latest interjection—show that he could go the way of Jeff Kennett because he will not listen. Tony Harris's comments demonstrate that the people of Australia take seriously the independence and powers of their Auditor-General. There is a lesson here for the Carr Government, should it care to listen. The current bill contains a number of provisions that work against the public interest. Firstly, this bill proposes to extend the restraint on criticism of government policy in respect of special or performance audits that currently exist within the Act to all the activities of the Auditor-General.

Secondly, the Greens are surprised to see that this bill would require a motion of both Houses of Parliament to trigger an investigation, rather than the more democratic alternative of allowing such an

investigation to be triggered by either House. Given the likely dominance of the lower House by the Government for a long time—it is obviously not into proportional representation—this provision effectively gives control of the trigger mechanisms to the Government. Thirdly, the Greens believe that the powers granted to the Auditor-General are not broad enough. It is essential that the legislation makes clear that the Auditor-General should act as a protector of the public interest and should have the power to initiate his or her own investigations. The Greens will be seeking to amend the bill in this regard during the Committee stage. Although the bill exhibits some flaws, the Greens will support it, given the importance of ensuring that the Auditor-General continues to fulfil this important function.

The Hon. JANELLE SAFFIN [9.13 p.m.]: I support the bill. No-one argues that the Auditor-General should have his powers curtailed, and no-one argues against him being independent. The Treasurer, by his actions, has defended that position. The Auditor-General operates already in an independent fashion. The Auditor-General is able to take up references of his own volition, and this bill does nothing to impede his power in that respect. I felt compelled to speak after listening to the arguments. I listened very carefully to the Hon. John Ryan. His speech was compelling but not persuasive, as my colleague the Hon. Helen Sham-Ho said.

I support the independence of the Auditor-General. It is important for the democratic health of this State to have an Auditor-General who is independent. It is important for the democratic health of Australia to have auditor-generals who are independent, and no-one doubts that. Honourable members referred to the integrity of the Auditor-General, but we are not talking about the integrity of the Auditor-General as a person; we are talking about the office of Auditor-General. That is where the integrity must be retained. It was also argued that referring matters to the Auditor-General enhances and protects democracy. It sounds like commonsense and one may say it is not understandable to argue the converse. But I would argue that neither House has to refer matters to the Auditor-General because the Auditor-General can do his own bidding, and he does.

By enabling one House to refer matters to the Auditor-General we are in fact abridging democracy because this will drag the office of the Auditor-General into the issues of the day, into political and partisan issues, and into the heat of the moment. We should leave that alone. The honourable member suggested that members on this side of House are restrained by the caucus vote and that if we were not so restrained we would stand up for democracy. I do stand up for democracy. I defend democracy. I understand democracy. It is with that understanding that I say we should leave the office of the Auditor-General alone. We should not sully that office by trying to interfere in it.

We will hear many arguments about how we will damage democracy by not agreeing to this, but I dispute that. I think that by having both Houses of Parliament involved in the matters that we refer to the Auditor-General we will widen the debate. With both Houses of Parliament involved it becomes a matter of public debate. It will go on the record and be seen and heard by members of the public. This bill will not place severe constraints on what the Auditor-General can do. I support the bill and reject the arguments in opposition to it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.17 p.m.]: The Australian Democrats support this bill, as we support anything that increases transparency and the consultation process in government. I believe that the office of Auditor-General is an institution integral to keeping government transparent and accountable, and any legislation that extends that power will receive support from the Australian Democrats. I congratulate the Government on having taken the initiative and for responding to the issues raised in volume three of the Auditor-General's 2001 report to Parliament. However, the Treasurer's opening remarks were somewhat of a dampener on my congratulations to the Government.

The Treasurer's opening comments were stated very clearly and need to be rebutted. He suggested that we must not give the Auditor-General too much power. After all, he is just one person and must not usurp the functions of the Opposition and Parliament. This is all a bit rich coming from the Treasurer, who had to be dragged to the High Court to provide information to Parliament, the man who would like to abolish the upper House, the man who seems to think that democracy is happening when his party, with 43 per cent of the primary vote in the lower House, holds 56 per cent of the seats and 100 per cent of the power.

How much accountability is there in a system in which the Government can simply gag Parliament even though it happens to have only 43 per cent of the primary vote, which would shrink to 37 per cent if the public actually had a choice as it has in the upper House. That is even less than was achieved by John Howard, who controls the country with 39 per cent of the vote. The Treasurer is also keen to say that the Auditor-General

has limited expertise in areas other than accounting, in policy, economics, et cetera. It is possible that the Auditor-General, in writing his reports, may reach beyond his expertise. I do not believe that has happened yet, but if he does go beyond his expertise he will do so in a report, which can be judged on its merits or demerits. The extent of the Auditor-General's knowledge and evaluation are there are in front of us. The words will gain him praise or condemnation. Unlike the Government, he cannot hide. This Government keeps most decisions to itself and regards that as proper: Whatever it takes, mate!

Finally, the Treasurer seems concerned that the Opposition and the crossbench will expand the bill. Radical amendments such as allowing the upper House to call for reports will be opposed by the Government. It is interesting that the proposed amendments are virtually the same because everyone has accepted the recommendations of the Auditor-General. I suppose that is why the Government is saying that it will not pass the bill if the amendments get up. It is effectively saying: If you expand the scope of this bill to what the Auditor-General actually suggested—the amendments we have all proposed are so similar because they have been taken from his suggestions—the Government will kill the bill in the lower House. I think that was the clear threat that the Treasurer made. The Government simply does not understand that government should be open. It does not quite get the concept. It can talk about it but when push comes to shove it will back right off.

I turn to the specific provisions of the bill. We note proposed section 27B (3) (b). We believe that as the proposed section stands the Executive still retains the power to veto a request by Parliament as the Government's majority in the lower House controls the vote. We believe that this section must be amended to enable either House to request a service from the Auditor-General, with a message going to the other House informing it that such a request has been sent. It is scarcely a threat to the Government's power to have the Auditor-General look at what the Government is doing and report on whether it is reasonable. Naturally, the more transparent the contracts and actions of the Government the less will be the need for the Auditor-General. But with this Government there is still a considerable need for the Auditor-General to do his work. A large amount of material is still kept secret if the Government can possibly manage it. Increased politicisation of the public service and increased use of privatised or semi-privatised government corporations and entities are making this more critical as we go along.

The proposition that the upper House should be able to request reports from the Auditor-General will be debated in Committee and, I hope, will be passed. Items [4] and [5] refer to "due diligence" in the sale of government undertakings. However, the question is how "due diligence" is to be practised under the Act. Does this reflect the process in the Commonwealth Aluminium Industry Act 1960? Clause 12 removes the Auditor-General's discretion in questioning government policy. The Australian Democrats do not agree with the proposed clause. Previous criticism or questioning of government policy directions is very important in checking the role of the Executive and keeps departments, agencies and corporations accountable and, hopefully, consistent. One example of this appears at page 108 of volume one of the Auditor-General's Report to Parliament in 2001, which commented on risk sharing in a timber supply contract between State Forests and a particular private company. Certain aspects of the long-term supply contract gave rise to "the perception that the company had successfully minimised its operational risk by shifting some risk to State Forests".

In addition to this, we cannot even find out how much we are getting ripped off by selling woodchips as these supply contracts are covered by confidentiality clauses. I ask the Minister: If this amendment is accepted by the Parliament will such salient advice now be prohibited? Item [15] will provide the Auditor-General with protection from personal liability for acts and omissions. The amendment will have a retrospective effect, exempting the Auditor-General from liability for past actions. As a principle, the Australian Democrats do not support retrospective legislation. However, I understand the reason behind the clause. The issue of whether the Auditor-General can volunteer documents relevant to the operation of statutory bodies was raised during the Public Accounts Committee inquiry into the collapse of the New South Wales Grains Board. In a letter printed in volume one of the Auditor-General's Report to Parliament 2001 the Crown Solicitor concluded that the "PAC had no power to require the production of documents from any person, including the Auditor-General". He also stated:

The voluntary disclosure by the Auditor-General to the members of the PAC of documents which came to the knowledge of the AG in the exercise of the functions of the AG under the Act and the prescribed requirements, such as working papers and management letters, would be a breach by the AG of the statutory obligation in S 38 91 to preserve secrecy.

However, the Public Accounts Committee report into the financial collapse of the New South Wales Grains Board concluded at page 7 that the Auditor-General, along with the Director-General of the Department of Agriculture, the Grains Board bankers and Treasury "failed to undertake an independent assessment and failed in their reporting on the Grains Board". Several findings in the committee's report referred to shortcomings in

the Auditor-General's reporting methods. Recommendations 4 to 7 outline inadequacies in report methodologies, which may have affected scrutiny of the Grains Board's activities. The Opposition will move an amendment to the bill that will implement recommendation 3 of the Public Accounts Committee report into the Grains Board. I ask all members to seriously consider this.

In relation to the Auditor-General's role in investigating protected disclosures, the Government has yet again failed to consult with groups such as Whistleblowers Australia on how best to serve and protect whistleblowers. After I sent it a copy of the bill to seek its opinion it mentioned that the bill was acceptable but needed to be implemented and practised by public servants. That is where the problems of whistleblowers have occurred. In relation to investigations into protected disclosures, in 1996 figures the minimal cost of opening a formal investigation by the Auditor-General was \$150,000 and, according to Whistleblowers Australia, the only formal investigation the Auditor-General conducted regarding a protected disclosure in 1997 involved the Newcastle coal loader. In other words, if it involves less than \$150,000 it cannot be done. One of the whistleblowers who was very critical about the effect of mismanagement in WorkCover was Robert Taylor, who has been drummed out of WorkCover without his superannuation. He has suffered terribly personally. With regard to whistleblowers and their relationship with the Auditor-General and the good that they may do with the intelligent co-operation of whistleblowers and an active Auditor-General, he wrote:

Following my 14/7/1995 and subsequent protected disclosures over 1995 to Mr Denis Streater (Director of AG responsible for protected disclosures) I met with Mr AC Harris (Auditor-General) and Mr Lee White (Audit Manager in December 1995 for WorkCover audit). At this meeting it was explained to me that due to the magnitude of the cost of conducting a formal investigation, and the fact that the funds had to be sourced from the AG's own limited budget, that the AG could not contemplate opening a formal investigation into the WorkCover solvency position, accounting and actuarial practices etc. It was agreed that the annual audit would more closely examine the matters of my formal protected disclosures. The additional audit processes were completed and an audit report with substantial adverse qualifications was issued to the financial statements of the WorkCover Scheme statutory accounts in the Annual Report. I believe that the NSW Parliament did not react in an appropriate manner to the cautionary warning of the Auditor-General and as a consequence was a string of huge losses as documented on Page 400 1998 NSW Auditor-General's Report to Parliament, Volume 3, Part 2, ISSN 1324-3705, namely:

"The operating results of the Scheme for the last five years have been:

	1997/98	1996/97	1995/96	1994/95	1993/94	Total \$ million
Underwriting loss (\$ million)	1,166	953	760	594	527	4,000
Deficiency of income Over expenditure (\$ million)	886	335	511	322	416	2,470

After a further loss of \$885.7m in the year to 30/6/98, the total deficiency in reserves of the WorkCover Scheme Statutory Funds as at 30 June 1998 was \$1,674.5m. "Given the size of this deficiency it is difficult to believe the whole-of-Government financial statements fully meet the information needs of users."

These losses of \$2,470 million have been augmented by the further \$622 million loss over six months 1/7/2000 to 31/12/00 reported to the Parliament by Minister Della Bosca.

Thus aggregate losses in excess of \$3,000 million (equivalent to the domestic component of the HIH insolvency) occurred because the AG was not able to fund a full and open investigation of the WorkCover Scheme at an early stage of its "end-stage" financial difficulties.

I believe the Act should include provisions to permit the AG to conduct an investigation if the AG deems that there is merit in a protected disclosure regarding the waste of NSW public resources then a formal investigation will be conducted and that the cost of the investigation will be funded by the subject agency.

That lengthy quote was from the letter by Robert Taylor, who blew the whistle. The Auditor-General was not been able to fully conduct the investigation because of a lack of resources in his department; he then sat by and watched as the losses to the State mounted. Of course, his reward was to be kicked out with little compensation. Robert Taylor commented on what should happen with the legislation:

1. The amendments regarding protected disclosures should not be limited to protected disclosures but also cover any reports of complaint to the AG (e.g. from ex-public sector employees or the general public).
2. General financial reporting standards of the NSW public sector are far weaker than for the private sector despite the higher level fiduciary duty obligations of public sector organisations. I refer particularly to the delayed reporting of annual results and annual reports. The June year-end corporates listed on the ASX report preliminary final profits over July and August, and manage to release annual reports and complete their general meetings of shareholders over September and October.

NSW public sector entities have more relaxed reporting obligations under the Public Finance and Audit Act than do ASX-listed corporations.

Also NSW public sector agencies are not required to report results on a half-yearly basis, unless of course if it is politically expedient. I note that Minister Della Bosca released details of the WorkCover Scheme's financial statements (for the first time) for the first six months of the 2000/01 financial year ... to 31/12/00 appears to have been motivated

by political expediency. The WorkCover Scheme half-year loss of \$622 million appears to be incongruent with the outcome for the year to 30/6/00, and apparently the actuarial liabilities of the Scheme were calculated on different assumptions (probably a lower discount rate) than at 30/6/00. There were not any explanatory comments on the result.

I commented on that in my speech during the WorkCover debate. The letter continued:

Thus there remains the suspicion that this outcome at 31/12/00 was orchestrated to secure the political outcome—

That was the passage of the WorkCover legislation this year. It shows the contempt that the Government has for the audit process and the due reporting processes of WorkCover and, by analogy, the Government's reports and accountability in general. This bill is progress, but the Government could have gone further. The amendments will go further and should be supported. I venture to suggest that the amendments will be supported. This is significant progress towards open government, and that is what we need in New South Wales.

The Hon. John Ryan alluded to the Wran era and commented that inquiries were held but not until other little inquiries had been carried out to determine the extent of the problem and whether they could be covered up. The Government was dragged kicking and screaming towards open government. It might be said that that process is still very much continuing. This bill is a significant step in the right direction, and the amendments are a further step. Later this year I will introduce my open government bill, which hopefully will be another step in obtaining a quality government for New South Wales.

Reverend the Hon. FRED NILE [9.36 p.m.]: The Christian Democratic Party supports the Public Finance and Audit Amendment (Auditor-General) Bill, which deals with many matters of concern to the Auditor-General. However, it does not go far enough towards meeting some of his concerns. The bill certainly meets one of the main concerns as a result of the narrow interpretation given by the Crown Solicitor concerning the powers of the Auditor-General. Many honourable members, particular those on the crossbench, have been concerned about restrictions on the Auditor-General.

Various members of the crossbench have corresponded on this matter. As a result, on 2 July I gave notice that I would seek leave to bring in a bill to amend the Public Finance and Audit Act 1983 with respect to the powers of the Auditor-General. I did that deliberately, because I knew that if enough pressure was put on the Government it would introduce its own bill, which it has now done. This bill replaces the power to report on any matter arising from audit with the power to report on any matter that relates to the exercise of the Auditor-General's functions. The bill has a retrospective effect by validating anything done by the Auditor-General before the commencement of the bill that would have been valid if the bill had been in force. That is an important element of the bill and will overcome the advice given by the Crown Solicitor.

It also sets out the functions of the Auditor-General, including new functions to carry out an audit or audit-related services requested by both Houses of Parliament or by the Treasurer. That seems to be one of the main differences of opinion concerning what the Government is doing and what the Auditor-General recommended in his report to Parliament for 2001, volume three. On pages 35 to 39 of that report he made a number of recommendations, which I took up as the basis for the bill of which I gave notice. In the report the Auditor-General makes some clear and specific recommendations that should be part of any bill that is introduced in order to clarify his powers. Page 35 of volume three of the Auditor-General's Report to Parliament for 2001 refers to the role of the Auditor-General in response to the Solicitor General's earlier advice. These recommendations—which were made public in his report—state:

The Auditor-General has the following functions:

- (a) to promote public accountability in the public administration of New South Wales, and
- (b) to audit the Public Accounts, the Total State Sector Accounts and such other accounts as the Auditor-General is authorised or required to audit, and
- (c) to perform such other functions set out in this or any other Act, and
- (d) to undertake any audit or auditor-related service requested by the Treasurer or a Minister.

The bill appears to have taken up those recommendations. However, there appears to be a difference of opinion about the next point. The report also states that the Auditor-General is required:

- (e) to undertake any audit or auditor-related service requested by the Legislative Assembly, the Legislative Council, or a Parliamentary Committee

The Auditor-General proposes that he may receive a request in three ways: from the Legislative Assembly, from this House or from a parliamentary committee. However, this bill proposes that that request be made by both Houses of Parliament, which is a major change. As other honourable members have pointed out, a government

must control the other place and therefore might be reluctant to authorise an audit or audit-related service, particularly if a sensitive subject is involved. That is highly likely as an audit is not usually requested if everyone is happy—it is not usually an opportunity for the Government to sing its own praises. If the community were concerned about a project or an aspect of the Government's public program—for example, if funding arrangements for the construction of the Sydney Harbour tunnel, tollways and so on created controversy in the community—an audit might be requested. The Government could be sensitive to calls for such an inquiry and, not wishing to commit suicide by supporting them, act to delay or postpone the inquiry. The amendments would take up that issue. The Auditor-General also has a general role:

... to do anything incidental or conducive to any of the Auditor-General's functions ... The Auditor-General is authorised to undertake the functions conferred on the Auditor-General in such manner as the Auditor-General thinks fit, having regard to recognised professional standards and practices.

I agree with the Hon. Janelle Saffin's comments that the Auditor-General's independence would be undermined if this House moved to draw him into the political debate. The Government would savagely reject any report that it considered to be politically biased. That would not be in the best interests of this place. I am certain that, like his predecessors, the current Auditor-General is aware of the danger of becoming involved in a political debate and adheres strictly to his role as auditor, providing factual reports to the House upon which it can base its decisions. It is a question of the quality of the person appointed as Auditor-General. I am sure the present appointee is aware of that fact and that both sides of Parliament will ensure that future appointees understand clearly the role of Auditor-General and the distinction between it and that of politicians. They are separate areas. This bill makes that important distinction, and thus will relieve many of the Auditor-General's concerns.

I hope that the bill will not be obstructed in another place if the amendments are carried in this House. We may face a dilemma in light of the Treasurer's statement. He has virtually drawn a line in the sand and said, "This is as far as we are prepared to go." We may have to wait and see whether he is bluffing. This bill should be passed and go to the other place, where the amendments might be rejected. We could then discuss refining the amendments further, as has occurred in the past. We must not cave in at this point. The Christian Democratic Party is pleased to support the bill and trusts that the Government will accept the amendments. As other honourable members have said in this debate, the Government would be quick to indicate where the Auditor-General had stepped over the line.

If that were to happen evidence could be produced and amendments could be moved to restrict the Auditor-General in the performance of his duties. The Treasurer pointed out that the Auditor-General can make self-referrals, so why would it be so difficult to allow either House to do the same? This place could express an opinion by saying, "We think this matter is important and we would like you to look at it." That is how we could bring an issue to the Auditor-General's attention. I urge the Government to pass the bill with amendments. Perhaps the legislation could be amended to state that the Public Accounts Committee or some other body will monitor the Auditor-General's powers to ensure that they are exercised properly. We support the bill.

The Hon. RICHARD JONES [9.47 p.m.]: The Public Finance and Audit Amendment (Auditor-General) Bill amends the Public Finance and Audit Act 1983 to extend the parliamentary reporting powers of the Auditor-General, makes that extension retrospective and makes a number of other amendments. The bill extends the power of the Auditor-General to report on any matter arising from or relating to the exercise of his functions, and sets out the functions of the Auditor-General. It extends the functions of the Auditor-General to include carrying out audit and audit-related services requested by both Houses of Parliament or the Treasurer, renames "special audits" as "performance audits", and facilitates the conduct of performance audits across a number of authorities. The bill allows the Auditor-General to report on a performance audit more quickly if the head of the authority being audited has provided any submissions or comments that he or she wishes to make and enables the Auditor-General not to require a performance audit in every case of a protected disclosure.

It excepts the Auditor-General from secrecy provisions to allow the disclosure of confidential information about any due diligence process relating to the sale of a government undertaking, and extends the Auditor-General's protection from personal liability for "acts" to cover "omissions". It is clear from written correspondence from the Auditor-General of 28 August that the Auditor-General's reporting powers were reduced by the Crown Solicitor's opinion that section 52 (3) of the Public Finance and Audit Act 1983 should be interpreted much more narrowly than had been assumed previously and that volume 4 of the Auditor-General's Report to Parliament, due by 4 September, could be tabled in its current form only if the Government's proposed legislation was backdated.

Although I am more than happy to support the bill—and, on this occasion, its retrospectivity—I am concerned that the Government is not using this opportunity to strengthen the Auditor-General's powers. Such a

move is long overdue. This bill merely restores the Auditor-General's powers to what they were assumed to be prior to the Crown Solicitor's advice. However, it does not bring the Auditor-General's powers up to date and in line with those of Auditors-General in other jurisdictions.

Under section 10 (a) of the Public Audit Act 2001, the Australian Capital Territory Auditor-General has the additional function of promoting public accountability in the public administration of the Territory. Similarly, the New Zealand Auditor-General, under part 3, section 18 (1) of the Auditor-General Act 1996, has the power to inquire into any matter concerning a public entity's use of resources. I believe that other honourable members would agree that they are both extremely valuable and necessary functions and powers. It is clear, surely, that the conferring of those powers is considerably overdue.

All sides of politics continue to rely on and praise the Auditor-General on his important and effective role in reviewing and auditing the public affairs of this State. The Special Minister of State, the Hon. John Della Bosca, recently lauded the Government's implementation of the Auditor-General's recommendations for changes to the Ambulance Service in answer to a question asked by the Hon. Jennifer Gardiner regarding the restructure of the ambulance board. Similarly, the Minister for Education and Training expressed resounding confidence in the Auditor-General when he put forward a proposal in August to ensure that taxpayers' money was not being wasted bailing out the commercial entities of universities by strengthening the power of the Auditor-General to investigate ailing enterprises. The Audit Office has also been resoundingly endorsed by members of the Opposition. For example, the honourable member for Vaucluse said in a press release on 1 May:

I give the Audit Office 10 out of 10 for technical competence.

The Audit Office can't be faulted on technical competence or professionalism.

The Audit Office produces excellent reports.

The honourable member for Vaucluse also said:

We need a howling watchdog in the Audit Office.

The Auditor-General should be encouraged.

The Office has a role in focusing and promoting public debate.

They are very true words. The Auditor-General is not, however, merely relied upon by the Government and the Opposition. His services have also been called upon by high-ranking public servants. In June the New South Wales Commissioner of Police ordered that a general review and audit of police communications and dispatch centres be carried out in conjunction with the New South Wales Auditor-General's office as part of the service's business improvement practices. The Auditor-General also provides a much-needed public service in auditing the performance, efficiency and effectiveness of government departments and authorities.

For example, he recently provided detailed reports on the Environment Protection Authority's control and reduction of pollution by industry and on the maintenance of public housing by the Department of Housing. He has also produced follow-up reports on the implementation of accepted recommendations of previous audit reports on the police response to calls for assistance; on the levying and collection of land tax; and on the co-ordination of bush fire fighting activities by the New South Wales Police Service, the Office of State Revenue and the New South Wales Rural Fire Service.

It is clear that our Auditor-General has the full confidence not only of the Government and its public servants but also of their critics. He should be granted the appropriate power to enable him to fulfil the duties of his office to the level expected of him, and deserved by, the people of New South Wales. I will move amendments in Committee to empower the Auditor-General to promote public accountability in public administration and to inquire into any matter concerning an authority's use of public resources. I will also support the amendments to be moved in Committee by other Opposition and crossbench members.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [9.53 p.m.], in reply: I thank honourable members for their contribution to the debate. I simply want to make two things clear. I took it from the remarks of the Hon. John Ryan that there was some suggestion that somehow or other I was questioning the integrity or capacity of the Auditor-General.

The Hon. John Jobling: It would not be the first time.

The Hon. MICHAEL EGAN: I have never done that, either in relation to this Auditor-General or the previous one, Mr Harris, who was sometimes very provocative, or any Auditor-General prior to Mr Harris. I can rightly and proudly lay claim to having appointed the current Auditor-General. After a recommendation by a selection panel I nominated him to the Cabinet, and I did so with a great deal of pleasure because he was a man that I got to know whilst I was Treasurer. He was a senior officer in Treasury and a man of undoubted integrity and capacity. I believed then and I believe now that he was an ideal appointment. Nevertheless, that does not mean that this Parliament should give him whatever powers he seeks.

All of us, being human, would like to have a limitless mandate, but that is not the way in which the world operates or should operate. We should all operate to a mandate that specifically outlines the functions and responsibilities we have. The amendments that I think the Opposition and crossbench members have been foreshadowing, which will give the Auditor-General the limitless function of promoting accountability, suggest to me that the function of the Auditor-General and the Audit Office would be something quite different from what has hitherto been regarded as the appropriate role.

The Hon. Malcolm Jones: An Auditor-General has always been able to comment on further items requiring audit.

The Hon. MICHAEL EGAN: What does the bill say? The bill enables the Auditor-General to "report on any matter that arises from or relates to the exercise of the audit or other functions of the Auditor-General and that in the opinion of the Auditor-General should be brought to the attention of Parliament". That is a pretty wide power that this bill gives to the Auditor-General. That is quite different, however, from the Opposition's suggestion that one of the Auditor-General's functions should be to promote accountability in general—because that is what it amounts to.

The Hon. John Ryan: What other government agencies have that?

The Hon. MICHAEL EGAN: One of the roles of the Parliament is to promote accountability, or at least responsibility. The notion that guides our parliamentary democracy is the notion of responsible government. Whilst "accountability" has some similarity to "responsibility", nevertheless "accountable government" is the American concept rather than "responsible government", which is the Westminster concept. I suppose that, in some ways, that is quibbling. The Audit Office and the Auditor-General have a well-recognised role. I would have thought that that was related not only to ensuring financial probity and compliance but also to ensuring the accuracy of financial information. In other words, that is what an auditor usually does.

An auditor usually audits sets of financial statements to ensure that they give an accurate picture of what they purport to be. In addition, in recent years the functions of the Audit Office and the Auditor-General have been widened to include what we now generally know as performance audits. Auditors look at the efficiency of operations conducted by government agencies. However, I think that is quite separate from giving the Auditor-General or the Audit Office a limitless mandate on accountability. Auditors-general and audit offices are not legal experts, constitutional experts, political experts or economic experts. They are accounting and auditing experts. That is their role.

I think it would be a bad development if the Audit Office became, if you like, the commentator-general's office or if the Auditor-General become the commentator-general. We had the situation in which the previous Auditor-General commented, publicly at any rate and occasionally within his reports, on matters about which he had no expertise.

The Hon. Duncan Gay: Is this your friend that you were not going to criticise?

The Hon. MICHAEL EGAN: Tony Harris?

The Hon. Duncan Gay: Yes.

The Hon. MICHAEL EGAN: I did not say that I have not criticised him on any occasion in the past. I have written some rather interesting letters to the *Australian Financial Review* and I have been patted on the back not only by colleagues on my side of politics but also by colleagues on the Opposition side of politics at Federal and State levels. I have never shied away from criticising Tony Harris and he has never shied away from having a crack at me. However, I believe that Tony Harris saw himself as an expert at large and that is not the

role of an Auditor-General. Of course, on many occasions when the Auditor-General's legal view was tested, it was found to be wanting. This bill arises because the Audit Office—in keeping I must say with the rest of us—was wrong about the legal interpretation of its functions under the existing Audit Act.

That is why we are amending the Public Finance and Audit Act. That is why we introduced this legislation. I simply point out to the House that this is not legislation that limits the powers of the Auditor-General; this is legislation that widens his powers. Indeed, the Auditor-General has conceded that. He says, "The Government's proposed amendments appear to overcome the specific difficulties flowing from the Crown Solicitor's opinion." In other words, this legislation restores the situation to what it was prior to the Crown Solicitor's opinion. The Government is pleased to introduce the legislation and we commend it to the House, but we certainly do not intend to give the Audit Office a limitless mandate.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

Schedule 1

Ms LEE RHIANNON [10.02 p.m.]: I move Greens amendment No. 1:

No. 1 Page 3, schedule 1 [1], proposed section 27B (3). Insert after line 9:

- (a) to promote public accountability in the public administration of the State,

This amendment makes it clear that a function of the Auditor-General's Office is to promote public accountability. It mimics section 10 of the Australian Capital Territory's Auditor-General's Act 1996. As we know, the bill creates a set of functions for the Auditor-General, but the Greens are concerned that it fails to identify the promotion of public accountability in the public administration of the State, and that is the basis of the amendment.

The Greens regard this as an increasingly important issue. As the role of government and the interface between public and private enterprise become increasingly complex and remote from the experience of the average member of the public, this safeguard needs to be included in legislation. In many ways, it is not simply a safeguard but a spelling out of what the Auditor-General's office does. If the amendment is opposed by the Government, I suggest to members that that should sound alarm bells, because it is a simple definition of what people expect an Auditor-General to do. I commend the amendment to the Committee.

The Hon. JOHN RYAN [10.04 p.m.]: Greens amendment No. 1 is in exactly the same terms as an amendment the Opposition intended to move. The Opposition is not worried about who moves the amendment; we have indicated unequivocally that we support it. The principle to which the Opposition adheres is largely that we will support amendments that we are confident the Auditor-General has supported. He has reported as such to the Parliament, and not one letter of that report has been repudiated by him. I am sure the Auditor-General well knows that the Government is introducing legislation that does not include clauses that the Auditor-General wants, and the Auditor General has made no comment. He has, of course, as is appropriate, allowed the Parliament to deliberate free from any grandstanding by him. But I am sure that if the Auditor-General were entirely satisfied with the Government's legislation, he would have called the dogs off and informed us well and truly: but it was not necessary to go to the additional extent required.

The Treasurer attempted to put an argument to the House that by inserting this small requirement into the bill we would be giving the Auditor-General limitless powers. For those who have not had the opportunity to read every clause of the bill, I will explain to the Committee some of the other restrictions that will remain in the bill and thereby restrict the Auditor-General's power to comment. Section 27B (5) reads:

Nothing in this Act entitles the Auditor-General to question the merits of policy objectives of the Government, including:

- (a) any policy objective of the Government contained in a record of a policy decision of Cabinet, and
- (b) a policy direction of a Minister, and
- (c) a policy statement in any Budget Paper or other document evidencing a policy direction of the Cabinet or a Minister.

The subsection makes it clear that the Auditor-General is not to involve himself in partisan comment about policy matters that the elected politicians of the day are debating anywhere, either in this Parliament or in the community. That is absolutely crystal clear, and a measure to that effect has not appeared in the Public Finance and Audit Act prior to this time.

We are not giving the Auditor-General the opportunity to make limitless comment or to enter into party-partisan political debate. We are simply giving the Auditor-General the opportunity to bring to the attention of the Parliament any other additional information, as he has done where it is relevant. We are not breaking new ground here; it has been tried and tested in another jurisdiction, and other jurisdictions of this country have similar requirements of their Auditors-General. It is, without doubt, a measure for the future.

I listened carefully to the Treasurer's reply to the second reading debate and I heard no convincing argument from him, other than in the most general terms, to the effect that the subsection contained any provision that was offensive. I want to be sure that it is possible for the Auditor-General to continue to provide us with the type of material he has been providing.

The Hon. Michael Egan: The Auditor-General concedes that this bill does that.

The Hon. JOHN RYAN: I know that the Treasurer's intention is to prevent the Auditor-General from telling this Parliament that decisions the Government is making will have a financial impact into the future. The Treasurer obviously intended to argue that the Auditor-General was not auditing the accounts of the State but was in fact commenting on something that the Government believed to be partisan political material in the Auditor-General's report for 2000. Yet, it was important information that the Parliament and the community needed. That is what the Treasurer wants to stop.

If we leave the functions of the Auditor-General without this aspirational statement, we will have nitpicking arguments from the Treasurer, every time the Auditor-General reports, that something in the report is outside the Auditor-General's jurisdiction and is not within his powers or expertise to comment on. Behind the scenes, and without the knowledge of parliamentarians, the Treasurer will tell the Auditor-General that he should leave certain things out of his reports—because in most instances the Government gets to see and comment on the Auditor-General's reports before they are tabled in Parliament. We will have ridiculous comments such as, "You do not have the authority to make this particular comment," and so on.

The Treasurer cries crocodile tears when he says that it is inappropriate for the Auditor-General, whilst carrying out his function of auditing, to comment on political issues. I am sure the Treasurer would remember occasions when he led the then Opposition in debate when the upper House referred a number of matters to the Auditor-General and added performance audits to the Auditor-General's functions.

The Hon. Michael Egan: The Parliament did that.

The Hon. JOHN RYAN: It did. But with the Parliament as it currently is, you want to be able to use your numbers in the other place, together with your proportional vote, to stop this sort of inquiry. I remember the Treasurer leading the charge to have inquiries conducted into Eastern Creek, which was somewhat controversial at the time, and into Port Macquarie hospital, which also was controversial at the time. The Labor Party's record of dragging the Auditor-General into political debates speaks for itself. In fact, I would concede that it was good that the Auditor-General brought the government of the day to account.

Governments never want their policies and actions exposed—that is the nature of people in government. Ministers do not like scrutiny, the results of which may come back at them. Regrettably, Labor governments in particular do not like such a level of scrutiny. They believe they are born to govern, that it is their right to have information and to let the public and the Opposition know only what they believe the public and the Opposition need to know. Labor governments do not believe there should be open and accountable government in which people like the Auditor-General have the capacity to reveal information. The Treasurer tries to cover it up with mealy-mouthed and vague arguments feigning concern about dragging the Auditor-General into public debate as a means of trying to stop him from doing what anyone would argue was a reasonable job. To suggest that the Auditor-General could argue against promoting public accountability in the public administration of the State is like trying to argue against motherhood.

What is the Treasurer's closing argument? If this House does not see things his way, the Government will take its bat and ball and take the whole bill away. We will then have an Auditor-General in the untenable

position of not being able to report on anything. That might be what the Treasurer wants, but I dare him to do that. I dare him to stand in the blaze of television lights and explain to the public of New South Wales that the reason the Auditor-General cannot do his job is that the New South Wales Government cannot tolerate the fact that the Auditor-General would be promoting public accountability. We will relish the opportunity of watching the Treasurer do that. We could dream that the Treasurer would pull this bill because we had the temerity to implement the Auditor-General's recommendations!

If the Treasurer wants to play that dangerous game, he should look forward to what the public of New South Wales will do to him in the not too distant future. The next State election is just over 12 months away and if the Treasurer wants to play brinkmanship, he should go right ahead. Anyone who attempts to explain to the public of New South Wales that this is an horrific and limitless power that the Auditor-General has to promote accountability must be worried that there is something really dangerous about pen and ink. This amendment does not enforce, insist or do anything other than allow the Auditor-General to promote accountability. The Treasurer is worried that the Auditor-General will be able to report and give information. People will ask what the Treasurer is trying to hide. There must be an enormous amount of information to hide. We could be so lucky that the Treasurer would try to convince anybody that that is a credible argument.

By supporting this amendment we are standing up for what we believe to be right. It is a short aspirational statement, and it will not result in democracy being crushed—as the Treasurer has tried to argue. This amendment will simply allow someone in government to promote public accountability. The Treasurer's argument that Parliament does that is the biggest joke going. We are given only two hours to ask a Minister a few set questions about the budget and that represents public accountability for the budget every year! After that members opposite obfuscate constantly rather than provide reasonable information.

I dare the Treasurer to invite any of us to ring up, for example, the police department and ask how many police in Campbelltown were on the beat three or four weeks ago? We are not allowed to know that, but the Auditor-General is able to know information that is important for the public of New South Wales and for public accountability. If anyone has the integrity to promote public accountability it is the Auditor-General. I look forward—as I am sure the New South Wales community does—to watching the Treasurer trying to argue otherwise in a blaze of publicity on each of the television channels. I suspect the argument will fail miserably.

Reverend the Hon. FRED NILE [10.14 p.m.]: Greens amendment No. 1 contains the same wording as the amendment proposed by the Hon. Richard Jones and the amendment proposed by the Liberal Party. It is based on the letter the Auditor-General wrote to the Treasurer and published in the Auditor-General's Report 2001, Volume 3, in which he enclosed other correspondence to the Treasurer. It might be said that this whole process has been open. The Auditor-General has not attempted to do something behind closed doors; rather, on 18 January he raised his concerns with the Treasurer, who is the right and proper person with whom to raise such concerns. Perhaps the letter was triggered by the Crown Solicitor's advice and led him to seek clarification about his own role. In my contribution to the second reading debate I referred to page 35 of the Auditor-General's report, in which he stated:

28A The Role of the Auditor-General.

(1) The Auditor-General has the following functions:

(a) to promote public accountability in the public administration of New South Wales.

He was up front again with the Treasurer, and by so doing was up front with the Government, when he said:

The revised wording I am proposing ... would, I believe, address this issue in an appropriate and sensible way. The wording of course will be subject to its own interpretation and I have no doubt that on future occasions there will still be specific instances where the government of the day will take issue with what an Auditor-General has written. This is inevitable and not necessarily unhealthy. What would be unhealthy is an ongoing diminution of my reporting capacity.

That would result in someone being less than an auditor, one who simply ticks off figures and signs off at the bottom of the document. An Auditor-General is responsible for more than that. The Auditor-General indicated in his letter to the Treasurer that the Crown Solicitor's advice would stop him exercising his right. He said:

Much of the existing commentary in my Reports would appear to fall outside the Crown Solicitor's interpretation.

The point is how he applies what he has learnt from the audit to an issue and gives the Parliament advice.

The Hon. Michael Egan: That's why I've introduced the bill.

Reverend the Hon. FRED NILE: Yes.

The Hon. Michael Egan: It doesn't need further amendment as suggested by the Opposition and the crossbench.

Reverend the Hon. FRED NILE: My point is that the Auditor-General is asking for the amendment, not the Liberal Party or any crossbench member. We are trying to assist the Auditor-General to carry out his duties. In a letter dated 20 August the Auditor-General said this was a very important issue. He said further:

In that letter I proposed a new section 28A "Role of the Auditor-General". One of the roles or functions suggested was "to promote public accountability in the public administration of New South Wales".

In an email of 18 September the Auditor-General stated that he was aware of the Government's amendments and again raised his concerns about how he is to carry out his duties. He said:

There are a number of reasons why it would be preferable for the Auditor-General's functions to be based more on 'outcomes' (ie) is why there is an Auditor-General) rather than solely on processors (ie undertakes specific audits).

First, issues of accountability, governance and probity are increasingly being accepted as appropriate issues for auditors-general to address. These issues are not necessarily associated with the audit process.

The Auditor General is really saying that there is a change of role for Auditors-General in the twenty-first century. Do we move into the twenty-first century or remain stuck where we are? The Auditor-General stated:

Whether these proposed functions reflect ... in the 21st century is clearly a matter for Parliament itself to debate and decide.

That is what we are doing. We want to move into the twenty-first century. The Government could move an amendment that will monitor the powers of the Auditor-General. If the Treasurer presents a case that those powers are being abused, we would review and amend the wording to make it more specific. I would rather encourage the Auditor-General to do his job effectively on behalf of the people of this State. In the long run it would be of positive assistance to the Government and the Treasurer in governing this State.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.20 p.m.]: I can only reiterate the comments I made in my reply to matters raised in the second reading debate. I have no doubt that every Auditor-General in the land, and probably those in other parts of the world, would like to be renamed the "commentator-general" and would like to have limitless powers. Wouldn't we all? I know I would, but I am sure honourable members would not give me such powers. Reverend the Hon. Fred Nile suggests that the role that the Government sees for the Auditor-General is simply to tick off figures and sign at the bottom. That is not the role that the Government sees for the Auditor-General. This bill will enable the Auditor-General to report on any matter that arises from, or relates to, the exercise of the audit or other functions of the Auditor-General.

The Hon. John Ryan: That is right, all other functions of the Auditor-General.

The Hon. MICHAEL EGAN: That is right.

The Hon. John Ryan: That is as defined by you.

The Hon. MICHAEL EGAN: No, it is defined and widened by the legislation.

The Hon. John Ryan: No, initially everyone presumed that the Auditor-General had a wider power, and you narrowed that power by getting advice from the Crown Solicitor and now you are making a big play by going half way back to what they used to be.

The Hon. MICHAEL EGAN: No, indeed I concede the point made by the Hon. John Ryan that we all thought that the powers of the Auditor-General were wider than the Crown Solicitor has subsequently interpreted them to be. That is why we have introduced the legislation.

The Hon. Dr Arthur Chesterfield-Evans: Why did you ask the question of the Crown Solicitor?

The Hon. MICHAEL EGAN: Because, as the Crown Solicitor's opinion pointed out, he had exceeded his mandate.

The Hon. John Jobling: He offered a view?

The Hon. MICHAEL EGAN: That is right, he exceeded his mandate.

The Hon. John Jobling: Why did you ask the question?

The Hon. MICHAEL EGAN: Because I knew he exceeded his mandate; it is as simple as that. He had misinterpreted the General Government Debt Elimination Bill and the Crown Solicitor confirmed my opinion. The Auditor-General in my view and subsequently in the Crown Solicitor's opinion was misinterpreting what the compliance was that he was meant to audit under the General Government Debt Elimination Bill, and that is why I wrote to the Crown Solicitor. I expected the Crown Solicitor to write back and agree with me, as he did, but he went further and cast doubt on a whole range of issues on which the Auditor-General had previously reported. That is why we have introduced this legislation to address what we thought—

The Hon. Dr Arthur Chesterfield-Evans: Not all.

The Hon. MICHAEL EGAN: Which power are we not restoring?

The Hon. Dr Arthur Chesterfield-Evans: You are being pretty specific about what he can't do.

The Hon. MICHAEL EGAN: The Auditor-General said in his memorandum of 18 September:

The Government's proposed amendments appear to overcome the specific difficulties flowing from the Crown's Solicitor's opinion.

He continues to say that he would prefer the functions to be expressed in another way but he concedes that this proposed legislation overcomes the problems that the Crown Solicitor's opinion raised in the first place. That is the purpose of the bill. For those reasons the Government will be opposing the amendment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.25 p.m.]: The Auditor-General has acknowledged that the bill deals with the Crown Solicitor's opinion but he says also that it is not the way he would prefer it. The Treasurer does not really care what the Auditor-General would prefer and does not want these amendments. The Treasurer wants to put and is putting limitations on the Auditor-General. Basically this amendment promotes public accountability in the public administration of this State. I must confess I could not put it any better than it was put by the Hon. John Ryan. He said that this bill is nothing but a motherhood statement. We want public accountability in public administration. It is crystal clear. It is such a simple statement—a laudable aim.

The Government suggests that this proposed legislation is more or less perfect and does not want it changed because it is awfully precious. That is the tenuous essence of what the Government is saying, amongst other waffle. Procedural efficiency or accountability is achieved if what is being done is being done efficiently and is happening correctly. Allocative efficiency or accountability is when you are doing the right thing or the wrong thing. In my field of medicine people are often very good at doing procedures that are not necessary, such as taking out tonsils that should be left in. It is all very well to say it is being done highly efficiently—

The Hon. Michael Egan: So the Auditor-General should become a medical expert as well as a constitutional expert, a legal expert, a political expert and an economic expert. What else? Do you want him to have engineering expertise?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The interjection shows how silly the argument of the Treasurer is. He wants to keep the views of the Auditor-General narrow. He wants the Auditor-General to look only at procedural aspects and perfectly balanced books, never mind that the finances of the State are being absurdly allocated and that contracts are extremely bad and detrimental to the taxpayer. The Treasurer wants the Auditor-General to look only at very narrow accounting aspects. That is why the concept of accountability in a broader sense should be included in the bill. As to the notion that the Auditor-General should not have expertise in other areas, if, as I said in my contribution to the second reading debate, the Auditor-General were to go beyond the level of his expertise and write a foolish report, he would be hoist with his own petard.

What the Auditor-General says is in the public arena. His conclusions are there for all of us to judge. If he is not doing a good job, we will be the first to know. The difference is that we know his expertise.

Unfortunately, that is not the case with regard to the Treasurer. When we wanted to get reasonable information from him we had to spend a lot of taxpayers' money and go to the High Court. We are going to extremes to get the most elementary of motherhood statements from this Treasurer, who obviously does not want to make such a statement. Hopefully this Parliament will make the right decision, whether or not the Treasurer likes it.

The Hon. RICHARD JONES [10.28 p.m.]: As Reverend the Hon. Fred Nile said, I had proposed to move an amendment in the same form as this amendment, which will give the Auditor-General the additional function of promoting public accountability in the public administration of the State. It is an extremely valuable and necessary function. It will bring the functions of our Auditor-General up to date and in line with those held by the Auditor-General of the Australian Capital Territory. Under section 10A of the Public Audit Act of the Australian Capital Territory the Territory Auditor-General has the function of promoting public accountability and the public administration of the Territory. It is not new. It happens in the Australian Capital Territory. It should happen here, too.

The Hon. ALAN CORBETT [10.29 p.m.]: I am attracted to this amendment, but I am a little hazy about what it means. To promote public accountability is a good statement, but I am trying to get my head around exactly what it means. Perhaps Ms Lee Rhiannon or the Opposition might give me some concrete examples of what sorts of things they envisage the Auditor-General doing to fulfil this function.

The Hon. JOHN RYAN [10.30 p.m.]: I will give the honourable member a simple example. On page 19 of the Auditor-General's Report to Parliament for 2000, Volume One, the Auditor-General explained that since the introduction of the General Government Debt Elimination Act 1995 there have been a number of changes to the scope of financial statements, which have made it difficult to determine debit trends in their components. For example, 1997-98 was the first year the public accounts were prepared on a general government sector basis. The following year was the first year the statement of the budget result was prepared on a general government sector basis, and so on. In other words, it is not enough to take off and say that the information the Government has given is accurate. The Auditor-General is explaining that it is difficult to understand. He then made the statement that the Treasurer found most offensive.

He said, "However, the above analysis reveals that taxes, outlays and the net cost of services are increasing at a rate well above the inflation rate." Auditing does not normally require that sort of information. There have been reductions in debt prior to the current year, but these have been largely due to one-off transactions, such as debt restructuring and asset sales, such as the sale of the Totalizator Agency Board, rather than restraint in government spending. That is the sort of information we ought to have. That is the sort of information the Treasurer wants to gag the Auditor-General from giving. The Auditor-General thought he already had the authority to do that. If the honourable member wants the Auditor-General not to give that sort of advice he should vote against this amendment. If he thinks we should have it, he should vote for it.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.31 p.m.]: If the Hon. John Ryan is suggesting to the Committee, the Hon. Alan Corbett or anyone else that the Auditor-General cannot make the sorts of comments he has just read from the Auditor-General's report, he is lying. He knows that that sort of comment, or anything like it, could be reported by the Auditor-General not only under the bill being considered by the Committee but, I would suggest, under the bill before it was amended. That was a lie and he knows it.

The CHAIRMAN: Order! Ms Lee Rhiannon has moved Greens amendment No. 1, which is identical to amendment No. 1 of the Hon. Richard Jones and Liberal amendment No. 1 as circulated, which cannot, therefore, be moved.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 23

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

Noes, 14

Dr Burgmann
Mr Costa
Mr Della Bosca
Mr Dyer
Mr Egan

Ms Fazio
Mr Hatzistergos
Mr Macdonald
Ms Saffin
Ms Tebbutt

Mr Tsang
Mr West
Tellers,
Ms Burnswoods
Mr Primrose

Pair

Mrs Forsythe

Mr Obeid

Question resolved in the affirmative.

Amendment agreed to.

Progress reported from Committee and leave granted to sit again.

POLICE SERVICE AMENDMENT (COMPLAINTS) BILL

Bill received.

Motion by the Hon. Michael Egan agreed to:

That this bill be read a first time and printed and standing orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

Bill read a first time.

ADJOURNMENT

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.42 p.m.]: I move:

That this House do now adjourn.

NO-TAKE MARINE RESERVES

The Hon. RICHARD JONES [10.42 p.m.]: No-take zones have been extensively studied by experts worldwide over the last decade and have been repeatedly found to rapidly increase both the abundance and size of individuals as well as the diversity of species within and around no-take zones. This, of course, concerns fish and other marine organisms in marine parks. However, these experts have also found that in order for the scientific and conservation benefits of no-take zones to be optimised they must be representative of and replicated within each biogeographic region, take into account spatial and temporal dynamics, be networked, be of sufficient size to be self-sustaining, comprise at least 20 per cent of all habitats in all regions, and be permanent. Different marine biogeographical regions have major differences in their biota. Examples of all regions and all habitats in each region need, therefore, to be included in a no-take marine system simply to contain the range of species and habitats.

All regions and all habitats must also be replicated in order to hedge against isolated catastrophic events that affect populations or destroy habitat, such as unanticipated fishing mortality, unforeseen management error and environmental changes. Protection of similar habitats in multiple locations also increases the chances that no-take zones will improve recruitment of individual species due to the spatial and temporal variation of environmental processes that influence larval survival and increase statistical inference, and is important for rigorously testing hypotheses on no-take functions and science-based improvement of no-take zone design. The location of no-take zones needs to take into account spatial and temporal dynamics—that is, the space that different species occupy and when they occupy it. Many migratory species, for example, occur in large aggregations at specific locations for part of their life cycle. At such times they are especially vulnerable to capture and are very easily overfished. Locating no-take zones in such areas is therefore crucial if they are to work for migratory species.

The location of no-take zones should also be determined by larval life span and the direction and distance of predicted transport of larvae by currents. Otherwise no-take zones may export larvae into areas

where successful recruitment is unlikely due to recruitment habitat and substrate. No-take zones need to be networked and linked ecologically through a larval dispersal and physically through currents if they are to be self-sustaining. Therefore, the zones need to be sufficiently close to one another for their populations to interact through the drift of larvae between them. The number of species whose populations can interact declines as the distance between no-take zones increases. To preserve the most community networks, no-take zones must, therefore, be close enough for relatively short distance dispersers to get from one to another and encompass the dispersal range of species with the greatest potential for movement. The networking of no-take zones thereby maximises the variety of connections, distances and directions between zones.

While a network design for a system of no-take zones is necessary for sustainability, a series of tiny zones is, however, not sufficient. To keep providing the benefits, a system of no-take zones must be large enough to sustain indefinitely all its natural processes and hence its full biodiversity. The larger the no-take zone the more species it will contain and the more likely its populations will survive periodic disturbances. Such disturbances in small no-take zones can, however, wipe out entire populations. Larger no-take zones are also more likely to contain definable adult populations, permit higher densities of adults and produce the high densities of larvae needed to seed populations outside those zones. No-take zones may also be unable to support self-sustaining populations unless they are very large.

A large proportion of marine species, and almost all of those we exploit, have open population dynamics—that is, they have a pelagic dispersal phase and their eggs or larvae are released into the open water where they develop over periods of days to a few months. Therefore, no-take zones need to contain large areas of this open water in order to be effective. As a result, small no-take zones may not be able to maintain viable populations of marine organisms and run the risk of failing fishers as well as conservationists. While more than 1,600 marine scientists have now backed a target of 20 per cent of all habitats in all regions to be protected from fishing by the year 2020, the optimal amount of no-take zone required to meet a given management goal may be higher, depending on the characteristics of the location and its resident species.

No-take zones also need to be made permanent in order to minimise their costs and maximise their benefits. While establishing no-take zones incurs short-term costs, if they are made permanent their long-term benefits will outweigh those costs. Rotations or temporary closures, on the other hand, achieve nothing in the long term and any reintroduction of fishing in a no-take zone will also set back habitat recovery. Habitat recovery is slower than population recovery and may take decades to complete. However, damage is often rapid, especially by heavy mobile fishing gear such as trawls. The rate at which habitats and species within no-take zones will recover is also greatly affected by the level of compliance with regulations and enforcement. The better the protection, the greater the benefits and the faster they accrue. [*Time expired.*]

GOODS AND SERVICES TAX

The Hon. IAN WEST [10.47 p.m.]: I speak about the goods and services tax [GST] raised as a topic during the television debate between John Howard and Kim Beazley last Sunday night. John Howard asked New South Wales voters to support him on the goods and services tax, which will not provide net benefits to New South Wales until 2007—nearly three years after the end of the next Federal Parliament. John Howard is going to this election without money and without policy in relation to New South Wales health and education. During the debate John Howard misled Australian electors by implying that the GST was currently benefiting State health and education, in particular, across Australia. The alleged current benefits of the GST were the central social and economic theme of John Howard's argument during the debate.

Since then it has become apparent that he did this to hide the fact that no real Federal Government health or education policy currently exists. Education and health are policy-free and monetary-free areas for the Howard Government. John Howard said that the best thing anybody has done for education in this country in recent years is to bring in the GST because money from the GST goes to the States. John Howard was attempting to imply that the GST has been a boon to education in all States across Australia. However, John Howard's performance during the debate was not only uninspired, visionless and negative, it was premised by a lie.

The Hon. Duncan Gay: Point of order: The honourable member just stated that the Prime Minister of Australia lied to the people of Australia during the debate on Sunday night. That is not only unparliamentary, it is untrue. If ever there was a lie perpetrated during that debate it was Kim Beazley saying that his father was the one who gave State aid to schools in Australia when, in fact, he knew that it was not his father. It was a Liberal Government and it came out of the bussing in Goulburn. The honourable member is using the time allocated for the adjournment debate in the New South Wales State Parliament to discuss a Federal issue and has accused the Prime Minister of Australia of lying. We know that the Prime Minister did not lie.

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): Order! There is no point of order. The honourable member may proceed.

The Hon. IAN WEST: At the same time 36 per cent of the GST collected by the Howard Government comes from New South Wales, and we are returned just 83¢ of each \$1. Not one State in Australia has received a cent from the GST to date. It will be another two years before any State sees an extra dollar from the GST. New South Wales schools and hospitals, and other public services, will be waiting until 2007, when New South Wales might receive a paltry \$114 million. Even that is no sure thing, given the Howard Government's record on Medicare funding, for example—an agreement it tore up in 2000.

There will be no extra money from the Federal Government for another six years, well after John Howard's political career is finished and well after not one but two Federal elections. All children in New South Wales currently at high school will have completed their high school certificates and will have left school altogether by the time New South Wales gets any extra dollars. In relation to health, people in New South Wales will be waiting until 2007 before any extra GST money is made available by the Federal Government.

At the same time, since the introduction of the GST last year the following economic and social indicators have become official. Economic growth has fallen from 4 per cent to 1.4 per cent; unemployment has risen from 6 per cent to 7 per cent; there has been a 30 per cent increase in bankruptcies and a threefold increase in the rate of inflation; and Australia has fallen to twenty-fourth position among the 30 OECD countries. John Howard's attempt to equate the GST with some sort of economic magic pudding, the saviour of our essential services such as health and education, is totally dishonest and misleading. The GST comprises only about \$20 billion of government revenue, less than a quarter of the Federal budget. Rupert Murdoch said just a week ago:

No country in the developed world needs educational improvements more urgently than Australia

On this occasion Rupert Murdoch has got it right. During the 5½ years of the Howard Government, Commonwealth funding of the school system has fallen from 45 per cent to 34 per cent. [*Time expired.*]

RETIREMENT OF THE HONOURABLE JOHN JOHNSON

The Hon. JAMES SAMIOS [10.52 p.m.]: I speak in relation to a motion passed by this House recently when I was absent. The motion, moved by the Deputy Leader of the Opposition, was that this House records its appreciation of the Hon. John Johnson for services to the Legislative Council and the people of New South Wales, both as a member of the Legislative Council for 26 years and as President of the House for 13 years. That motion, to which a number of members of this House spoke, including the Leader of the Opposition and the Special Minister of State, was passed and it is my regret that I was not here for the occasion.

I would like to contribute to that debate, somewhat belatedly, by expressing my appreciation for what the Hon. John Johnson has done for the democratic process. Reference was made by a number of speakers to the fact that Hon. John Johnson has always been very proud of a number of matters in his career. He is proud to be a member of the Labor Party and is proud of his position in the union movement. He had joined the retail industry early in his career and later became a union official. He is proud to be a Catholic and to be an Irish-Australian.

In 1976 he was elected to Parliament and in 1978 he was elected President of the Legislative Council. My involvement with the Hon. John Johnson was reflected in the courtesy that he showed on all occasions, but particularly on multicultural occasions at diplomatic functions or functions involving peak ethnic groups. He was always very respectful of Australia's multicultural society. He appreciated the strength of the diversity of multiculturalism and took great pains to show his respect for protocol when he represented the Premier at a huge number of diplomatic functions. In particular on such occasions he would seek out members of the Opposition so that he could acknowledge them.

By doing enormous research the Hon. John Johnson also showed respect for the ethnicity of the groups he would be relating to. Much of his research was based on his own personal experience of talking to groups and studying their history and their religion. He was very knowledgeable in that regard. Honourable members should not forget the respect that he showed for the parliamentary system, for the democratic process, for the State and for the nation.

It gives me very great pleasure to wish him well in his retirement and happiness with his wife Pauline, his children and his grandchildren. I would also like to express my respect not only for his career and what he has done as an icon of the Parliament, but for the fact that he kept to his traditions. As he said, "tenete traditiones".

The Hon. Michael Egan: What does that mean?

The Hon. JAMES SAMIOS: Keep to the traditions.

ETTREMA WILDERNESS

The Hon. MALCOLM JONES [10.57 p.m.]: Last week I returned to Yalwal Creek, now known as the Ettrema Wilderness. Yalwal Creek was the jewel in the outdoor recreationalists' crown and was much loved and cherished. Basically, it is an old gold mining and timber area to the south-west of Nowra. From the dam at the old site of Yalwal the creek runs north to its confluence with the Shoalhaven River. The majority of the area used by campers, four-wheel drivers, bushwalkers and motorcyclists is a wide, rock-strewn, mostly dry river bed. It is mostly dry due to the dam, although a small amount of water does flow.

I was greatly saddened when this area was included in the Ettrema Wilderness in approximately 1997. The area provided many perfect camping spots and was very safe for children—an idyllic place. Due to my personal interest in this area I revisited it to see for myself how the declaration of wilderness had enhanced the values of this place. I was sadly disappointed. The tangle of weeds and fallen timber made penetration of the main walking trail difficult though not impossible. Forget fire management of any kind! There is so much fuel or on the ground that when El Niño turns around and renders the placed tinderbox dry, as it will, a raging holocaust will result. At the entry to the area a sign heralds the virtues of wilderness. It states:

Why is Ettrema Wilderness important?

- There are many threatened animals in Ettrema including the giant burrowing frog, broad-headed snake, brush-tailed rock wallaby, yellow-bellied glider, glossy black cockatoo and ground parrot.
- Several stands of the rare Ettrema malle (eucalyptus sturgissiana) are found in the southern part of Ettrema.

Ettrema is a huge area and is also home to many feral animals. In particular, there is evidence of pigs everywhere. Foxes have long been a menace, as well as wild dogs. Why will the exclusion of people using vehicular transport along one seven kilometre stretch of trail change this?

The sign also says that there is evidence that Aboriginal people lived there a long time ago, which offers significant insights into our history. But why exclude the general public? The sign also states that the Yalwal Creek catchment is an important part of Nowra's water supply and is protected to ensure the water is clean. So what? That was the case long before declaration of wilderness. The sign further states that the area is spectacularly beautiful and is conserved for everyone to enjoy. The point is that nobody is enjoying it now, because nobody wants to go there on foot, especially not bushwalkers, as nobody has been through that thicket for a very long time.

I find the absence of bushwalkers, and of everyone else, particularly vexing. The National Parks and Wildlife Service went out of its way to annex that extension, a relatively small parcel of land, to the Ettrema Wilderness. Part of the argument in support of that decision was that it had so much support from bushwalkers. This I find very hard to believe, as there is no evidence of any movement other than pigs along this overgrown trail. To lock up so much land and then allow it to be neglected is not good management. I do not object to the \$260 million-plus spent on national parks in New South Wales. Locking up as much as 45 per cent—the outcome after the next round of declarations—and then allowing it to be neglected and denied to New South Wales families is a tragedy that, among other things, will help derail young people's connection with the bush. Many members may respond to these comments with shock and horror, but I can tell them that the Emperor has no new clothes.

FERAL PIGS CONTROL

The Hon. IAN COHEN [11.00 p.m.]: I wish to discuss the problem of feral pigs in our parks and other public lands, an issue related to that raised by the Hon. Malcolm Jones. The pig population in Kosciuszko National Park appears to be expanding at an alarming rate, no doubt assisted by the activities of pig hunters, in much the same way as brumby runners use the parks as brumby breeding grounds. Some time ago I received a letter from Ian Haynes. He had written to the Premier stating his appreciation of the Government's efforts to protect almost 900,000 hectares of wilderness and create many new parks. However, he believes it is essential to protect not only our parks but also the wilderness areas, especially those in the Kosciuszko National Park. Mr Haynes is clear in saying:

There is one animal which is a great threat not only to our parks but also to our agriculture—wild pigs.

It has been brought to his attention recently that some pig control activity has been carried out in the Kosciuszko National Park. Some 70 pigs have been reportedly killed in the Jagungal wilderness area and Finn's Valley, an

area ravaged in recent times, where snow grass had almost become an endangered species, while four more were killed near Tin Hut at the headwaters of the Finn's and Valentine rivers near Mount Gungahen on the Great Dividing Range. In itself this is great news, but it is a great pity that park managers allow the wild pig population to become so large before attempts are made to control them. The protection of public lands from many destructive activities is necessary, but what is being done about wild pigs on both public and private land?

Mr Haynes goes on to talk about the worrying consequences of the transmission of foot and mouth disease if and when it arrives in Australia. This animal, the wild pig, by itself has the potential to create more havoc and damage to our country's wellbeing than any other feral animal. The wild pig problem has been around for almost as long as the white man has been in Australia but at no time has there been any significant, co-ordinated attempt to eradicate these pests. Many half-hearted or piecemeal attempts have been made but it appears there will be no real move for their eradication until a threat of great magnitude occurs. As usual, such a threat has arisen after the horse has bolted. It appears that the pig population must reach almost plague proportions before any concentrated action will be taken. One example of that was the slaughter of more than 70 pigs in the vicinity of Mount Jagungal, in a proclaimed wilderness area. Is it not time that the various State government departments co-ordinated a concentrated effort to eliminate the feral or wild pig?

The spread of wild pigs is facilitated by those who release them onto public lands, especially national parks, for their own recreation regardless of the consequences. High penalties should be imposed on people releasing pigs or other animals, and also on people not authorised to be in parks but who go there to trap, chase or shoot animals, feral or not. Mr Haynes talks about his experience of walking in the Kosciuszko National Park and regularly coming across damage caused by pigs, some of it fresh and some several days old. On a recent trip, looking for a hut not seen by his companion for 62 years—obviously a person of some age, out walking in the wilderness, and that is fantastic—fresh pig diggings were found on private land adjoining the Kosciuszko National Park.

Like all animals, pigs will follow any track, whether made by man or by horse-riding groups. The distance feral pigs travel in a day, utilising these tracks, is quite incredible. Mr Haynes asked the Government to ensure that the National Parks and Wildlife Service is given both adequate legislative and resource support to control the explosion of feral animals, which have a clear potential to carry various diseases across parks and through the forest estate.

WILDLIFE AS PETS

M5 EAST SINGLE EXHAUST STACK

Ms LEE RHIANNON [11.05 p.m.]: Animals Australia, with the assistance of the International Fund for Animal Welfare, has recently undertaken a study of the keeping of native wildlife as pets, with particular reference to Victoria, which allows a number of wildlife species to be kept as domestic animals. The report from this study, "The Keeping of 'Pet Wildlife' in Victoria—A Review", clearly documents the problems associated with this trend. Animals Australia has concluded that Victoria's more liberal wildlife regulations set a dangerous precedent in the event of reviews of the keeping of wildlife conducted in other States and Territories with a view to greater liberalisation. The Greens will work with animal welfare groups to ensure that the example of Victoria is not followed in New South Wales. Animals Australia recommends that Victoria implement an immediate moratorium on the breeding of wildlife for the pet trade and the commercial trade in pet wildlife. It wishes to put to bed the argument that by domesticating Australian wildlife we can safeguard it. This moratorium should remain in place pending thorough examination of the extent of welfare problems among pet wildlife, independent assessment, and public debate on whether the problems can be adequately addressed.

I turn to the M5 East stack, an issue that has often been raised in this House in questions, in adjournment debates and even in private members' legislation. This is becoming a very serious time for the people living around the stack. The Greens share with the people who live around the M5 East stack their considerable concerns that they will soon be exposed to unacceptable levels of pollution when the M5 East motorway commences operation. We understand there could be 25 million car movements each year along that motorway. They will be spewing their exhaust fumes out of that stack and over the homes of the people living in the area. The people who have fought long and hard to prevent that happening to their suburb and to all of Sydney said in a recent statement:

Mr Scully knows he can have filtration installed for as little as \$11 million, with guaranteed 90% efficiency to remove the most harmful fine particles. Stop filtering the information and filter the fumes. Enough hot air. Just do it!

That was the message that the people of Turrella and other suburbs surrounding the M5 East stack sent to the Minister for Transport. The Greens strongly endorse that message. We will continue to work with the community, but it is a sad day for this Parliament that it has not been able to find a way to do the right thing by the community.

Motion agreed to.

House adjourned at 11.09 p.m.
