

# LEGISLATIVE COUNCIL

Wednesday 14 November 2001

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

**The President** offered the Prayers.

## **CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT (PERMANENCY PLANNING) BILL (No 2)**

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

**Motion by the Hon. Carmel Tebbutt agreed to:**

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

## **COURTS LEGISLATION AMENDMENT BILL**

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

## **GENERAL PURPOSE STANDING COMMITTEE No. 5**

### **Reporting Date**

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

That the reporting date for the inquiry by General Purpose Standing Committee No. 5 into the Hawkesbury-Nepean Catchment Management Trust be extended from 30 November 2001 to 27 February 2002.

## **M5 EAST MOTORWAY**

**Motion by the Hon. Peter Breen agreed to:**

1. That, under Standing Order 18, there be laid on the table of the House by 5.00 p.m. on Wednesday 21 November 2001, and made public without restricted access, all documents relating to:
  - (a) any approval of the location of the monitoring network for the purposes of Condition 75 of the Minister for Urban Affairs and Planning, Conditions of Approval in relation to the proposed M5 East Motorway, dated 9 December 1997,
  - (b) the development of the Protocol referred to in further condition 73.4 of the DUAP 2000 Schedule dated August 2000, and
  - (c) any independent review or comment on the Protocol referred to in 1 (b), by the Environment Protection Authority, the CSIRO or any other competent authority or individual.
2. That an indexed list of all documents tabled under this resolution be prepared showing the date of creation of the document, a description of the document and the author of the document.
3. That anything required to be laid before the House by this resolution may be lodged with the Clerk of the House if the House is not sitting and, unless privilege is claimed, is deemed for all purposes to have been presented to or laid before the House and published by authority of the House.
4. Where a document required to be tabled under this order is considered to be privileged and should not be made public or tabled:
  - (a) a return is to be prepared and tabled showing the date of creation of the document, a description of the document, the author of the document and reasons for the claim of privilege,
  - (b) the documents are to be delivered to the Clerk of the House by 5.00 p.m. Wednesday 21 November 2001, and:
    - (i) made available only to members of the Legislative Council,
    - (ii) not published or copied without an order of the House.

5. (a) Where any member of the House, by communication in writing to the Clerk, disputes the validity of a claim of privilege in relation to a particular document, the Clerk is authorised to release the disputed document to an independent legal arbiter, for evaluation and report within 5 days as to the validity of the claim.
- (b) The independent legal arbiter is to be appointed by the President and must be a Queen's Counsel, a Senior Counsel or a retired Supreme Court Judge.
- (c) A report from the independent legal arbiter is to be lodged with the Clerk of the House, and:
  - (i) made available only to Members of the Legislative Council,
  - (ii) not published or copied without an order of the House.

## **SELECT COMMITTEE ON THE INCREASE IN PRISONER POPULATION**

### **Final Report**

#### **Motion by the Hon. John Ryan agreed to:**

1. That the Clerk of the House refer the Final Report of the Select Committee on the Increase in Prisoner Population tabled on 13 November 2001 to the Leader of the Government in the House who must within 6 months report to the House what action, if any, the Government proposes to take in relation to the recommendations of the Committee.
2. (a) If, at the time at which the Government seeks to report to the House, the House is not sitting, a Minister may present the response to the Clerk of the House.
- (b) A response presented to the Clerk is:
  - (i) on presentation, and for all purposes, deemed to have been laid before the House,
  - (ii) to be printed by authority of the Clerk,
  - (iii) for all purposes deemed to be a document published by order or under the authority of the House, and
  - (iv) to be recorded in the Minutes of the Proceedings of the House.
3. The President is to report to the House when any Government response has not been received within the 6-month deadline.

## **COMPANION ANIMAL REGISTER**

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

1. That, under Standing Order 18, there be laid on the table of the House by 5.00 p.m. on Tuesday 20 November 2001, and made public without restricted access, a return showing as at 1 October 2001 for each local government area:
  - (a) the number of dogs identified but not registered,
  - (b) the number of dogs identified and registered,
  - (c) the number of cats identified and not registered, and
  - (d) the number of cats identified and registered,on the New South Wales Companion Animal Register.
2. That anything required to be laid before the House by this resolution may be lodged with the Clerk of the House if the House is not sitting, and is deemed for all purposes to have been presented to or laid before the House and published by authority of the House.

## **BILLS UNPROCLAIMED**

**The Hon. Carmel Tebbutt** tabled a list detailing all legislation unproclaimed 90 days after assent as at 13 November 2001.

## **TABLING OF PAPERS**

#### **The Hon. Carmel Tebbutt** tabled the following reports:

- (1) Annual Reports (Departments) Act 1985—Reports for year ended 30 June 2001:  
Attorney General's Department  
National Parks and Wildlife Service  
New South Wales Fisheries

- (2) Annual Reports (Statutory Bodies) Act 1984—Reports for year ended 30 June 2001:
- Department of Land and Water Conservation
  - Jenolan Caves Reserve Trust
  - Legal Aid Commission
  - Public Trustee
  - Royal Botanic Gardens and Domain Trust
- (3) Anti-Discrimination Act 1977—Report of Anti-Discrimination Board for year ended 30 June 2001.
- (4) Victims Compensation Act 1996—Report of Victims Compensation Tribunal for year ended 30 June 2001.

**Ordered to be printed.**

## PETITIONS

### Circus Animals

Petition praying for opposition to the suffering of wild animals and their use in circuses, 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**.

### 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**.

## SPECIAL ADJOURNMENT

**Motion by the Hon. Michael Egan agreed to:**

That this House at its rising today do adjourn until Thursday 15 November 2001 at 2.30 p.m.

## PASSENGER TRANSPORT ACT: DISALLOWANCE OF PASSENGER TRANSPORT (PRIVATE HIRE VEHICLE SERVICES) REGULATION 2001

**Business called on, and postponed on motion by the Hon. Michael Gallacher.**

## GRAIN MARKETING ACT: DISALLOWANCE OF CLAUSE 4 (1) (a) OF THE GRAIN MARKETING REGULATION 2001

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [11.13 a.m.]: I move:

That under section 41 (1) of the Interpretation Act 1987, this House disallows clause 4 (1) (a) of the Grain Marketing Regulation 2001 published in *Government Gazette* No. 117, dated, 27 July 2001 at page 5629 and tabled in this House on 11 September 2001.

Clause 4 (1) (a) of the Grain Marketing Regulation must be disallowed because the Opposition and the people of New South Wales demand and deserve accountability from their elected representatives. This is a Government in its death throes that wants to deny accountability to the people of New South Wales. If there were ever a message for the New South Wales Labor Government it was sent last weekend when it got a real kick in the pants. The Opposition, on behalf of the people of New South Wales, will not allow the Carr Government—and particularly the Minister for Agriculture, and Minister for Land and Water Conservation—to make regulations that will protect it from independent scrutiny. Clause 4 (1) (a) gives the Minister for Agriculture the power to stifle independent examination of the role played by government agencies and members of the Carr Government, including the Minister, in the \$160 million collapse of the New South Wales Grains Board.

The clause seeks to modify Corporations Law and the Australian Securities and Investments Commission law so that any references in those laws to the commission or ASIC will be read as references to

the Minister for Agriculture. That is pretty convenient and pretty ordinary. The Opposition believes that, in light of the circumstances surrounding the \$160 million collapse of the Grains Board, replacing Australia's corporate watchdog, the Australian Securities and Investments Commission, with the Minister is inappropriate and must certainly be disallowed. Honourable members will be aware that the sorry saga of the Grains Board's collapse culminated in the appointment of Mr Murray Smith of KPMG as administrator in November 2000. Mr Smith has worked tirelessly over the past 12 months, and I am pleased to note that on 24 October 2001 the Supreme Court approved his scheme of arrangement to provide returns to creditors.

From the moment the Grains Board's financial difficulties became apparent, the Opposition has been concerned for grain growers throughout New South Wales who were owed money from the 1999-2000 Grains Board grain pools. The Government tried initially to cover up our concerns, but when it could not hide any more it was forced to come clean in dribs and drabs. We are pleased to note that the administrator's scheme of arrangement makes provision for farmer creditors to be finally paid their outstanding pool payments. I emphasise that this disallowance motion in no way criticises the administrator's scheme of arrangement or puts at risk payments to growers or other creditors. It is important that crossbenchers understand that point. This disallowance motion is the result of a cynical attempt by the Carr Government to restrict the independent scrutiny of its involvement in the collapse of the New South Wales Grains Board.

As part of an administration process an administrator may conduct investigations into the parties involved in the collapse of an entity. Under normal circumstances, the administrator would apply to ASIC—Australia's corporate watchdog—for approval to conduct such examinations. ASIC fulfils this role across the nation and is independent and highly skilled in dealing with such matters. As stated previously, clause 4 (1) (a) of the regulation would replace all references to ASIC in relation to the Grains Board with a reference to the Minister for Agriculture. Gone is that independent body with its expertise in dealing with companies under administration and in its place is the Minister, who was responsible for the agriculture portfolio when the Grains Board collapsed. The Government is asking us to make that change.

**The Hon. John Della Bosca:** That's a bit rough.

**The Hon. DUNCAN GAY:** It is not rough, it is the truth. The Minister does not like the truth. Such a scenario cannot be viewed as representing appropriate levels of accountability as the administrator is now forced to seek approval from the Minister for Agriculture to hold examinations into the parties involved. Bearing in mind the Minister for Agriculture's role in overseeing the collapse of the board and the criticism of the directors-general of the Department of Agriculture and Treasury by the Public Accounts Committee [PAC] in its inquiry into the collapse of the board, there is a clear conflict of interest. The Minister and the departments that were criticised by the PAC now are deciding where things should go. They should be removed and someone else should make that decision, not the Minister.

At this stage we will not move an amendment to say who that person should be; we will leave it to the Government to return with another regulation. We could suggest many people for this responsibility—the first that comes to mind is the Auditor-General, or the Director-General of Fair Trading or the Solicitor General. It is not within our writ to say who it should be; the Government has that responsibility. However, the one person it should not be is the person mentioned in this regulation. Justice not only has to be done, it must be seen to be done. The Minister for Agriculture cannot have this responsibility because he oversaw the debacle. The Government should decide who should be the independent person and introduce another regulation. We are not being dictatorial in saying who the Government should appoint. As I said earlier, we are recommending that the Government consider people such as the Auditor-General, the Solicitor General or the Director-General of Fair Trading—to name just three. I am sure that the people of New South Wales would find many other people acceptable appointees.

On the one hand, the Minister for Agriculture was responsible for the Grains Board; on the other hand, the Minister will now be responsible for granting approval to the administrator to hold examinations into the parties involved in the collapse. That is just not acceptable. I believe that we could rightly say that when the regulation first went through the change was unintentional. But as the Government groups and sends in its heavies—the Hon. Tony Kelly, who is responsible for the 3.3 per cent loss in the Country Labor vote over the weekend, sits with the crossbenchers, and the Hon. Ian Macdonald has been weaving his magical way with them—my thought that this regulation may have been unintentional is out the window. These blokes are working hard backfilling and trying to cover what they are doing. They are monsterring crossbench members—they do not want them to hear my contribution. Whether intentional or otherwise, the Minister has the ability to influence the process of determining the reasons for and the outcomes of the Grains Board debacle. This is not acceptable to the Opposition nor, I believe, to the people of New South Wales.

I have absolutely no doubt that the Government will argue that this clause is legal, that the explanatory note to the regulation is—to use the Government's words—of a machinery nature and that we should not worry that the bloke who presided over it now has the ability to change the direction of the outcome. The Opposition does not dispute the fact that clause 4 (1) (a) is valid under the Grain Marketing Act. However, the Opposition disputes that the clause is appropriate and consistent with the concept of accountable and open corporate governance. The Opposition believes also that the Government had options other than to vest the Minister for Agriculture—the Minister who presided over the collapse of the board—with the powers of ASIC in relation to the Grains Board. In a letter dated 24 October 2001 the Minister wrote:

There is provision in the legislation for the Minister to appoint the ASIC as an agent in these matters, with the consent of the Commonwealth.

The Acting Chairperson of ASIC, Jillian Segal, also raised this possibility in a letter to the Leader of the National Party dated 9 October 2001. Why has the Carr Government chosen to make a regulation and transfer ASIC's powers regarding the Grains Board to the Minister for Agriculture when ASIC could have continued to perform its functions as an independent expert? Does the Government have something to hide? I suspect the answer to that rhetorical question is "Yes". The Labor Government's options do not end there. Section 4C (2) (c) of the Grain Marketing Act 1991 states that any regulation may "specify that a reference to ASIC in any provision of the Corporations legislation that is the subject of the declaration is to be read as a reference to another person". The key words are "another person". In other words, there was no requirement for the Minister for Agriculture to be the person who took on the powers of ASIC in this matter.

It was the Government's decision to appoint the Minister for Agriculture and create this conflict of interest. No matter what it says, the Government did not have to do that. It chose to do so and it is up to us to interpret why. As I said, it was the Government's decision to appoint the Minister for Agriculture and create this conflict of interest. Frankly, we need an explanation from the Government as to why the Minister for Agriculture and not the Auditor-General or some other appropriate body or individual was selected to replace ASIC in this important role. That important matter needs to be answered. It has been left to the Opposition to redress this imbalance and return some accountability to the Government's handling of what was already a debacle. Frankly, I would have thought, given the debacle with the Grains Board, that the Government would have been racing with a great deal alacrity to try to put in place proper governance. Yet, once again, the Government resorts again to its usual stripes; it has decided that it wants to put in place something that is not proper.

**The Hon. Doug Moppett:** Less than the usual standard.

**The Hon. DUNCAN GAY:** Exactly. As usual, my colleague sums it up properly. Accountability is a principle strongly supported by the Opposition and, I suspect, the crossbenchers. However, it appears to be actively avoided by this Government. The Government is just not learning and it continues to follow the same path. This clause shuns independent accountability and goes hand in hand with the Government's attempt to devalue the role of the Auditor-General through the Public Finance and Audit Amendment (Auditor-General) Bill that was debated yesterday in this House, which once again was stonewalled by the Government. This proposal is not much different; in fact, it is almost exactly the same. The Government does not want proper scrutiny. The Opposition welcomes an explanation from the Government as to why it believes the Minister for Agriculture has the same level of expertise in dealing with administrators as ASIC. That would be an interesting explanation!

I challenge the Government to guarantee that this clause will not influence the investigation of the collapse of the Grains Board. Most importantly, I challenge the Carr Government to explain to the Opposition and the people of New South Wales how it can justify vesting such power in the same Minister who was ultimately responsible for the board's failure. This clause must be disallowed to restore the faith of the people of New South Wales in the accountability of their representatives and to ensure that the administrator of the New South Wales Grains Board is not hindered in his attempts to determine the reasons behind a \$160 million collapse of the Grains Board. [*Time expired.*]

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.28 a.m.]: The Democrats support the disallowance motion. We are a little confused as to why the Government would try something like this; we wonder whether there is some proper rationale that is not clear to us. It seems a gross miscarriage of power to try to put the Minister in charge of this process when the head of his department was most probably the person directly responsible for the oversight of the collapse of the Grains Board. The general principle is that the Grains Board was buying grain and selling it as a one-desk system to try to maintain its price. The problem with these

types of systems is that they interfere with the free market: they pool growers and product to try to exact a higher price. Oil-producing cartels such as the Organisation of Petroleum Exporting Countries [OPEC], to which some oil-producing States do not belong, engage in this type of practice. The World Trade Organisation tries to attack such cartels. As was pointed out by my Federal colleagues, the amount of money going to primary producers as a percentage of the price paid by consumers has been falling, therefore processors and retailers are getting a better deal.

**The Hon. John Della Bosca:** Not in this instance.

**The Hon. Doug Moppett:** That hasn't got much to do with this, though.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I am making philosophical points. Thank you for all the interruptions. Growers join together to create these types of boards to increase their prices, and to reduce the ability of futures traders and big corporations to maximise the profit between the non-grower segment and the consumer by using techniques, knowledge, long-range weather forecasts and market power. Obviously, farmers support things when they are going well and providing a better deal for them. On one level farmers are keen to support prices. The Grains Board is buying at a relatively high price, assuming that it will be able to sell at that price. That is the risk. In this case the board bought grain at a higher price than it was able to sell it, and it went belly up. This does not happen overnight.

**The Hon. Duncan Gay:** They didn't actually buy the grain, they bought the futures contracts.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes, they bought the futures contracts. They trade in grain. Obviously, futures trading is more risky than trading in grain that you already have. The board was not able to compete. The Democrats have taken a strong interest in this matter. I asked a question that was answered on 10 October last year. At that stage the Minister was hopeful that the board could trade out of its problems. He acknowledged the loss of \$35 million. On 21 November last year I asked what was happening to farmers and the Minister assured me, in his response on 27 February, that Graincorp had taken over the Grains Board's responsibility for payments to farmers. It remains to be seen whether that is correct. The matter has been investigated by Joe Tripodi and the Public Accounts Committee, which produced its report in May. The committee made some pretty tough comments in its report, such as:

As the inquiry unfolded, the greatest challenge for the Committee was dealing with the failure of so many safeguards and the deflection of responsibility for breakdowns by so many stakeholders.

That really sums it up. The director-general of the department and the Auditor-General were part of that failure. In a series of articles in the *Australian* on 7 and 10 August, Bryan Frith pointed out the inappropriateness of the Government putting the Minister in charge of investigating the head of his department. He should have followed the proper processes and had the Australian Securities and Investments Commission run the investigation. There have been some changes to the Corporations Law, but it is perfectly clear that an independent group, rather than the Minister, should investigate this matter. Today I received a crossbench briefing note from the Minister. I seek leave to incorporate it rather than read it into *Hansard*.

#### **Leave not granted.**

I also note an article in the *Land* on 25 October suggesting that, as the matter is being investigated by the Independent Commission Against Corruption, there has been a \$2.5 billion bill for grain that did not exist. The briefing note states that this is a highly technical and complex matter of a purely administrative nature. It basically says to the crossbenchers that it is much too complicated for us, but that is nonsense. The Government has tried to pretend that the decision to keep the New South Wales Grains Board under the old Corporations Law of New South Wales was based on advice from Parliamentary Counsel and the Government's legal adviser. The briefing note states:

The principal reason for this was that a process under the "old" NSW *Corporations Law* had already begun (namely the application by the Administrator of the Board, to wind up the Board, lodged in February 2001), and it would be inappropriate to change the overarching legal code applying to the Board, midway through a process.

To facilitate the commissioning of ASIC, or any other federal body, to undertake enquiries into any of the past activities of the Board should that be the desire of the Board's Administrator, a process was required to achieve that outcome administratively.

One would have to be a better grammarian than I to say whether that is a sentence, whether it contains a finite verb, but it certainly does not add to the total sum of human wisdom so far as I can see. The Opposition is trying

to assign blame for the board's failure to the Minister for Agriculture, which is clearly not the case. That is not what the Opposition is trying to do; it is saying that the Minister is not the appropriate person to sort this out, and that is absolutely correct. Neither the Minister nor his department has special expertise in this area. If they did, the corporation would not be in the muddle it is in now. It is not the Minister's fault. The Public Accounts Committee found that the corporation was under the supervision of the director-general. This matter must be investigated fully. The Minister should not carry out the investigation; ASIC should. I support the motion.

**The Hon. RICK COLLESS** [11.38 a.m.]: I support the disallowance motion moved by the Leader of the National Party. I have a great fear that if this regulation were allowed to stand, the Minister for Agriculture, Richard Amery, would replace the Australian Securities and Investments Commission [ASIC] in the role of corporate watchdog with oversight of the New South Wales Grains Board. To put it plainly, that would be like putting Dracula in charge of the blood bank! The regulation removes independent scrutiny; it would allow the Minister for Agriculture and the Carr Labor Government to stifle any independent examination of the role played by government agencies and government members, including the Minister for Agriculture, in the \$160 million collapse of the New South Wales Grains Board.

Bearing in mind the circumstances surrounding the collapse of the Grains Board, I find it unbelievable that the Government would seek to replace ASIC, the peak corporate watchdog in this country, with the Minister for Agriculture. One may well ask: What are the Minister's qualifications to perform that role? Honourable members are undoubtedly aware of the sorry saga of the collapse of the Grains Board, which culminated in the appointment of Mr Murray Smith of KPMG as administrator in November 2000. Mr Smith should be congratulated on having worked tirelessly over the past 12 months, and I am pleased to note that on 24 October the Supreme Court approved his scheme of arrangement to provide returns to creditors.

At that time, grain growers throughout New South Wales were concerned that the Grains Board could be liquidated. I appreciate that paragraph (c) of clause 4 (1) of the regulation protected the levy paid per tonne by grain producers to the Grains Board. Because of the Supreme Court approval of the scheme of arrangement, the board will not go into liquidation. As a consequence, paragraphs (b) and (c) are superfluous. The Opposition opposes paragraph (a) of clause 4 (1). As part of the administration process, an administrator may conduct investigations into parties involved in the collapse of an entity. Under normal circumstances the administrator would apply to ASIC for approval to hold such examinations.

ASIC fulfils this role across the nation, and it is highly skilled and independent in dealing with such issues. As previously stated, the effect of clause 4 (1) of the Grain Marketing Regulation is to delete all references to "ASIC" in relation to the Grains Board and replace them with "the Minister for Agriculture". That will get rid of an independent body that has the expertise to fulfil its core role of dealing with companies that are in the hands of an administrator. In its place will be the Minister for Agriculture, who was responsible for the collapse of the Grains Board in the first instance. Such a scenario cannot be viewed as representing appropriate levels of accountability, because the administrator will be forced to seek approval from the Minister for Agriculture to examine the relevant parties.

Bearing in mind the Minister's involvement in overseeing the collapse of the Grains Board and the criticism of the Director-General of the Department of Agriculture and New South Wales Treasury by the Public Accounts Committee during its inquiry into the collapse of the Grains Board, there is a clear conflict of interest. On the one hand, the Minister for Agriculture was responsible for the collapse of the Grains Board and, on the other hand, he is now to be responsible for allowing the administrator to examine the parties involved in the collapse. As I say, it is a clear conflict of interest. This clause must be disallowed to restore the faith of the people of New South Wales in the accountability of their representatives and to ensure that the administrator of the Grains Board is not hindered in his attempts to determine the reasons behind the \$160 million collapse of the Grains Board. I commend the motion to the House.

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.45 a.m.]: It is important that the Government responds to a number of points made in the debate. The first is that, in spite of the exemption that the Hon. Dr Arthur Chesterfield-Evans gave the Opposition, the starting point for the Opposition's argument is the absurd suggestion by the Hon. Rick Colless, which the Deputy Leader of the Opposition also made more than once in the debate, that, to use the exact words of the Deputy Leader of the Opposition, "the Minister presided over the collapse of the Grains Board". That was the assertion.

**The Hon. Duncan Gay**: That was the fact.

**The Hon. JOHN DELLA BOSCA:** The Hon. Dr Arthur Chesterfield-Evans said the opposite. He did not think that was the most important element.

**The Hon. Duncan Gay:** He was Minister when it happened.

**The Hon. JOHN DELLA BOSCA:** That is not the same as presiding over the collapse of the Grains Board. There is a vast difference between that and the reason why the Government has opposed the disallowance of the regulation. The second matter is that the Coalition has completely ignored, and is asking the crossbench members to completely ignore, the fact that the Independent Commission Against Corruption found that the Minister and the department have no case to answer in respect of any conflict of interest or any other issue relating to the collapse of the Grains Board. It is important to understand that the Opposition's basis for disallowance is political gain. It is not related to the operation of the Grains Board or better regulations; it is a political attack against this Minister and the Government. That is a starting point.

I mean no disrespect to the participants in the debate, but the Government's position has a technical legal basis. It is not that there is anything to hide. Nascent, and in part blatant, in the case put forward by the Deputy Leader of the Opposition for this disallowance is the notion that the Government or the Minister is trying to hide from members of the crossbench, the public, and the grain growers something that is their fault. The second point is that ICAC has already found that there is no such case and no such problem. There is nothing to hide. Why has the Minister introduced these regulations? Why is the Government seeking to resist this disallowance motion? Because, in terms of practical political outcomes, we are trying to secure future payments to grain producers from the available pools. This motion relates to security for grain producers.

This is not a political case about something the Minister or his department is trying to conceal from the crossbenchers, the Auditor-General, the public, the farming community or anyone else. The Government is attempting to protect future payments to grain producers. If I remember my history, at one time the National Party claimed to be the party that looked after the interests of grain producers. I believe it is important to balance the political case against the practical potential effect of the disallowance of these regulations. In a nutshell, Parliamentary Counsel advised the Government to proceed in the way it has; Parliamentary Counsel would reinforce the Government's decision to resist the disallowance of this regulation.

The Minister and the Department of Agriculture have the administrative responsibility for matters related to the Grains Board. That is very straightforward. There is a simple process by which the Minister makes arrangements to request Australian Securities and Investments Commission [ASIC] involvement, or involve another Minister, for example the Attorney General or a separate State authority—perhaps the Auditor-General, as has been suggested on more than one occasion. The Hon. Dr Arthur Chesterfield-Evans mixed up the debate about the Auditor-General's powers and this matter. It has nothing to do with that. It is simply that the Minister for Agriculture is in a position to require ASIC involvement in a very simple chain of responsibility. To put another Minister or a separate authority with separate powers under a different Act into the chain of responsibility nominated by regulation 4 (1) (a) would unnecessarily complicate any potential intervention by ASIC or any other Federal authority. There is an enormous amount of case law on which the Government would base its view. The Opposition's intention to move to disallow clause 4 (1) (a) of the Grain Marketing Regulation 2001, made under the Grain Marketing Act 1991, runs counter to the best interests of grain growers in this State.

I would like to explain some of the background to help the Opposition understand this situation and to allow crossbenchers to make a considered judgment on how they should vote on the disallowance motion. Most of these arguments are—this is not a disrespectful thing to say in the context of the assertion by the Hon. Dr Arthur Chesterfield-Evans—of a technical legal nature rather than of an abstract political nature. There is only one political case here: protecting the interests of grain producers into the future. All the rest of the arguments are about fairly technical issues to do with the operation of the regulation and the interplay of Federal and State authorities. I will try to keep the language as clear as possible, but my brief is based on technical advice.

The changes became necessary when the Corporations (Consequential Amendments) Act 2001 made changes to all Acts on the New South Wales statute book that create statutory corporations. This included the New South Wales Grains Board. The need for the regulation arose as a result of the introduction of the Commonwealth Corporations Law to replace all individual State corporations law. While the Commonwealth Corporations Law applies to public and private corporations automatically, a decision needed to be taken in each case about its application to State statutory entities. Although most State statutory entities were brought under the ambit of the Commonwealth Corporations Law either wholly or partly, for various commonsense reasons



some statutory State entities were left under the continued State corporations legislation. These included the New South Wales Grains Board and, honourable members may be interested to learn, the Garvan Institute and the Centenary Institute of Cancer Medicine and Cell Biology.

There was a simple and sound reason for not placing the Grains Board under the new Commonwealth Corporations Law. That was that a process under the State corporations law was already under way—the liquidation application lodged back in February this year. Parliamentary Counsel and the Government's legal advisers suggested that it would not be desirable to change the overriding legal framework midway through the administration that the Grains Board is now under, particularly with the liquidation application having been lodged. It is quite clear that the Government was not trying to change the situation for the sake of changing it, nor of course for the sake of protecting the Minister or the department from any information flow, but was simply acting to preserve the status quo in the best interests of the growers.

Under the Constitution and the doctrine laid down in the case of *R v. Hughes* the State cannot require Commonwealth entities such as the ASIC to undertake investigations into State corporations and State corporate entities. For these reasons it is necessary to specify some State entity or person to stand in for ASIC. The intention was for that entity or person to be able to enter into an administrative agreement with ASIC. Any such agreement would require the Commonwealth's approval but would enable ASIC to undertake whatever investigations the administrator or the Government might seek of it. It is important to understand that it includes the administrator. Possible choices of State entity include either the Minister for Agriculture, the Director-General of New South Wales Agriculture, the Director-General of the Department of Fair Trading or, as I have previously canvassed, other Ministers. Given that the objective was to facilitate the process of undertaking investigations, the Minister for Agriculture was the entity recommended by the Government's legal counsel.

Without regulation 4 (1) (a) it will be much more difficult to arrange adequate independent investigation of the Grains Board. It demonstrably does not involve a lesser prudential standard, as was suggested by the Hon. Doug Moppett. The administrator, Murray Smith, has conducted his own investigation into the board and he believes that it would be appropriate for ASIC or some other Commonwealth institution to investigate aspects of the board's previous activities. It will be possible under regulation 4 (1) (a) for the Minister for Agriculture to arrange for this to occur. Without the regulation it may not have been possible for this to happen. If the Opposition wants to prevent ASIC or any other Commonwealth body from undertaking investigations into the Grains Board, it should continue pursuing this motion. I will repeat that: If the Opposition and the crossbench want to prevent ASIC or any other Commonwealth body from undertaking investigations into the Grains Board, they should continue pursuing this motion.

**The Hon. Duncan Gay:** Why did you choose Amery? What is in his CV that makes him better in this role than the others? Is he a corporate lawyer?

**The Hon. JOHN DELLA BOSCA:** Apart from anything else, he holds a commission from the Crown. He is a Minister in this Government. The Deputy Leader of the Opposition should listen to this because it is very important. I will quote his leader, the Leader of the National Party, the Hon. George Souris—I saw him socially the other night, by the way—who made an appearance on ABC radio's *Country Hour* last week. He was, I think, alleging a whole range of conspiracy theories about how this happened. The Leader of the Opposition in this place is carrying those conspiracy theories into this debate. The Leader of the National Party, the member for the Upper Hunter, was in many respects misleading the many farmers in New South Wales who listen to, and rely for their political commentary on, *Country Hour* whenever they get the chance by suggesting that the Minister for Agriculture was trying to prevent investigations into the New South Wales Grains Board. Nothing could be further from the truth.

In fact, the sole purpose of regulation 4 (1) (a), which the Opposition is foolishly seeking to disallow, is to facilitate further investigations into the board should the administrator deem them to be necessary. I think that the Leader of the Opposition and the Deputy Leader would agree that one does not have to be a corporate lawyer to understand the basic principles on which an administrator is obliged under the law to discharge his duties. In brief, it is obviously to act without fear or favour as an agent of the shareholders, with a separate set of corporate and fiduciary obligations and prudential obligations that are long honoured in our law. Whatever the administrator will require is allowable and facilitated very simply by the arrangements we put in place in regulation 4 (1) (a).

I repeat that Parliamentary Counsel proposed the changes to the Government; they were not dreamed up by anyone in the office of the Minister for Agriculture or his portfolio, or by the Minister in some sort of

power grab. The conspiracy theories were suggested by the member for Upper Hunter and reinforced by the Leader of the Opposition in this place. The member for Upper Hunter was a corporate accountant. Is it suggested that he should be the person recommended? The Minister for Agriculture holds a commission from the Crown. He has an obligation to discharge, but the administrator is the person with the qualifications and the prudential obligations. This regulation facilitates the administrator should he deem it necessary to conveniently conduct any inquiries required. It is absurd for the Opposition to be putting forward conspiracy theories and creating a political football of the Grains Board instead of trying to secure future payments for growers. That is what this debate is really about.

I repeat that the administrator is free to seek whatever independent investigations he feels are necessary. The Government sees that it has a responsibility to facilitate that, not to obstruct it with a complicated spiderweb of other arrangements involving the Auditor-General, the man in the moon, the Attorney General, someone else, or someone else again. The responsible Minister who holds a commission under the Crown is in a position to ensure that the administrator is able to do his job. To suggest this was a cover-up, as is implied by the Leader of the National Party in the other place and the Deputy Leader of the Opposition here, is self-evidently wrong. Any members who are interested in examining all the relevant legislative provisions themselves—

**The Hon. Duncan Gay:** You are verballing him.

**The Hon. JOHN DELLA BOSCA:** He was verballing the Minister for Agriculture on *Country Hour*.

**The Hon. Michael Gallacher:** You do not know who is—

**The Hon. JOHN DELLA BOSCA:** You know about verballing—it is one of your specialities. I suggest that members refer to the Corporations (Ancillary Provisions) Act 2001, sections 4B and 4C of the Grain Marketing Act 1991, the Commonwealth's Australian Securities and Investments Commission Act 2001, particularly section 11, and the Corporations (Consequential Amendments) Act 2001, particularly schedule 2. Members would then be able to find out for themselves the technical and legal processes that the Government has followed and the basis for it. However, the Opposition does not want to do that. [*Time expired.*]

**Pursuant to sessional orders business interrupted.**

## QUESTIONS WITHOUT NOTICE

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### WORKERS COMPENSATION COMMISSION PRESIDENT

**The Hon. MICHAEL GALLACHER:** My question without notice is to the Minister for Industrial Relations. Did the Minister delay the appointment of Justice Terry Sheahan to his new position as President of the Workers Compensation Commission and also delay the legislative implementation of his report until yesterday to avoid a trade union revolt prior to the Federal election on 10 November?

**The Hon. JOHN DELLA BOSCA:** The question allows me the opportunity to announce in question time—the standing orders allow me to do so because the announcement has already been made—that the Workers Compensation Commission was created in June. Its role is to resolve workers compensation disputes in a fair, efficient and timely way. The commission will begin hearing its first case early next year. I remain hopeful that it will be 1 January.

**The Hon. Michael Gallacher:** You are hopeful!

**The Hon. JOHN DELLA BOSCA:** I expect it. The Leader of the Opposition should keep his counsel and await future confirmation of a 1 January starting date. Yesterday I announced that the President of the new Workers Compensation Commission will be Justice Terry Sheahan. Injured workers, employers and the Government are extremely fortunate to have someone as knowledgeable and experienced as Justice Sheahan in that role. The Deputy Presidents of the Workers Compensation Commission will be Gary Byron and Gabriel Fleming. The Registrar of the Workers Compensation Commission will be Helen Walker. The commission's senior staff will commence their duties on 19 November. I am pleased to advise that senior personnel on the new commission have been appointed. Finalisation of the rules, liaison with various stakeholders and required transitional arrangements will now commence.

**The Hon. MICHAEL GALLACHER:** I ask a supplementary question. On what date did the Minister advise Her Excellency the Governor to appoint Justice Sheahan as President of the Workers Compensation Commission?

**The Hon. JOHN DELLA BOSCA:** I have told the Leader of the Opposition previously that I am not a mean man with dates, I am never mean with disclosing information. However, I cannot recall on which date the Governor gave the relevant undertakings.

**The Hon. Michael Gallacher:** You kept it under wraps until after the Federal election.

**The Hon. JOHN DELLA BOSCA:** As the Leader of the Opposition knows, it is customary for Cabinet to recommend appointments to the Governor and for Cabinet to delegate the timing of announcements to Ministers. It happens all the time. It happened under the Fahey Government and the Greiner Government, and I am sure it even happened under the Askin Government. It goes back a long way.

**The Hon. Michael Egan:** He would be surprised at what happened under the Askin Government.

**The Hon. JOHN DELLA BOSCA:** Yes, the Leader of the Opposition would be surprised at what happened under the Askin Government.

**The Hon. Michael Egan:** They were all his supporters.

**The Hon. JOHN DELLA BOSCA:** No, most of them were in knickerbockers then, they were not his supporters; the Hon. John Jobling would have been the only one.

**The Hon. John Jobling:** I have been around for a while.

**The Hon. JOHN DELLA BOSCA:** Yes, that is right. I am happy to provide the Leader of the Opposition with those dates, if he is that keen.

#### REGIONAL NEW SOUTH WALES PROMOTION

**The Hon. TONY KELLY:** My question without notice is to the Treasurer, and Minister for State Development. Will the Minister advise the House how Government initiatives are continuing to promote country New South Wales?

**The Hon. MICHAEL EGAN:** I am pleased to inform the House that my esteemed colleague Mr Harry Woods has offered all regional New South Wales councils the opportunity to promote their area in a new joint publication between the State Government and the New South Wales Real Estate Institute, which is a very good organisation. The institute serves the real estate industry admirably.

**The Hon. Duncan Gay:** Which you bag.

**The Hon. MICHAEL EGAN:** I have never bagged the Real Estate Institute; I have the highest regard for it. Due for release next year, the second edition of the "Guide to Investing and Living in Regional NSW" highlights country New South Wales as a place to live and do business. It will provide a snapshot of the State's diverse regional areas, including their competitive advantages, growing industries, facilities and infrastructure, workforce and other business issues. The country real estate market in many parts of New South Wales has been very strong over the past two years.

**The Hon. Duncan Gay:** Booming.

**The Hon. MICHAEL EGAN:** Yes, booming, as the Deputy Leader of the Opposition rightly points out. The State Government is keen to encourage more people to consider the lifestyle advantages, as well as the business opportunities. Sometimes we tend to think of country New South Wales as providing lifestyle advantages; too often we overlook the business opportunities in rural and regional New South Wales. The Real Estate Institute New South Wales President, Chris Fitzpatrick, a regionally based businessman, has stated that he is pleased to be involved with the second edition of the publication. According to Mr Fitzpatrick, the publication will offer a wealth of information allowing people to make informed choices about important investment and lifestyle opportunities in New South Wales.

Property is an important industry for regional communities in New South Wales. The Real Estate Institute tells us that approximately 80 people are employed directly and another 80 indirectly for every 100 new dwellings built. There is a substantial injection of funds into local economies with every property purchased, as well as future opportunities provided through ongoing maintenance, repairs and renovations. Fuelled by the first home-owner incentives, an increasing number of young families are building and buying homes in regional centres. That is not only great news for those young families, but also provides a strong economic boost to local communities across regional New South Wales. This informative magazine will be produced by Enterprise Publications. The Department of State and Regional Development will be in contact with all regional councils in the near future to discuss their involvement in the project.

#### **NORTHPOWER FORMER CHIEF EXECUTIVE OFFICER**

**The Hon. DUNCAN GAY:** My question without notice is to the Treasurer. What is the Government's response to claims by the Treasurer's former Chief Executive Officer of NorthPower, Tom Parkinson, that the regulatory set-up in the New South Wales electricity industry is, to quote him, "a real mess"? Is the Treasurer aware that Tom Parkinson was the highest paid chief executive of State-owned electricity distributors and he received a substantial performance bonus of \$106,000 from the Treasurer in 1999-2000? Does that not make him well placed to comment on such matters?

**The Hon. MICHAEL EGAN:** As the Minister for Industrial Relations, Assistant Treasurer, and Minister Assisting the Premier for the Central Coast has pointed out, decisions on bonuses for chief executive officers of the State-owned corporations are not made by shareholding Ministers, they are made by the boards.

**The Hon. Dr Brian Pezzutti:** But you can sack them.

**The Hon. MICHAEL EGAN:** Yes, I can sack boards. But, of course, there is a new board for Country Energy.

**The Hon. Duncan Gay:** You would not approve it, but you thought he was pretty good.

**The Hon. MICHAEL EGAN:** No. As I pointed out, the shareholding Ministers do not approve bonuses. Organisations work as corporate boards.

**The Hon. Duncan Gay:** You come in here and criticise him.

**The Hon. MICHAEL EGAN:** Tom Parkinson is a very fine man and was a very fine Chief Executive Officer of NorthPower.

**The Hon. Duncan Gay:** What about his comments that you have "a real mess"?

**The Hon. MICHAEL EGAN:** He never made those comments to me.

**The Hon. Duncan Gay:** Well, he has made them now.

**The Hon. MICHAEL EGAN:** I have not seen them. I would be happy to consider any advice that he wants to provide. Perhaps the Deputy Leader of the National Party could tell the House precisely in what respect Mr Parkinson believes that the regulatory arrangements for electricity in New South Wales should be overhauled.

**The Hon. Dr Brian Pezzutti:** Employ him as a consultant.

**The Hon. MICHAEL EGAN:** I have my own advisers, and I think that they provide very good advice.

#### **LOCAL GOVERNMENT RATE PEGGING FIGURES**

**The Hon. IAN COHEN:** My question without notice is to the Minister for Mineral Resources, representing the Minister for Local Government. Will the Minister inform the House how the rate-pegging figure is determined with local councils across New South Wales? Is it a fact that this rate pegging falls below the consumer price index? If so, how does this allow councils to meet reasonable inflation costs and maintain a reasonable level of service delivery? Does the Minister expect the current rating levels to cover the added burden of wage increases?

**The Hon. EDDIE OBEID:** I thank the Hon. Ian Cohen for a very important question. I will seek details from my colleague in the other House and let him know.

## POULTRY INDUSTRY DEREGULATION

**The Hon. PETER PRIMROSE:** My question without notice is to the Special Minister of State, and Minister Assisting the Premier for the Central Coast. Will he inform the House of the results of the review of the poultry industry under National Competition Policy?

**The Hon. JOHN DELLA BOSCA:** As honourable members would be aware, the Government was required to conduct a review of the poultry industry under National Competition Policy. Yesterday the Premier reported that, after lengthy consideration, a compelling case for deregulation has not been made. Strong representations were received from Country Labor on this issue and from my Labor colleagues from the Central Coast, Newcastle and many western Sydney members of Parliament. The main task of the review was to assess whether the current legislation restricted competition and whether it achieved a net public benefit. As the Premier yesterday informed the Parliament, Cabinet reached a decision on the issue the day before yesterday. The State Government will not deregulate the poultry meat industry in New South Wales.

This decision reflects concerns raised by poultry growers across the State and the fact that there is no clear, demonstrated public benefit. Research commissioned during the review found that if the industry were deregulated 20 per cent of growers would be forced out of the business before the current grower contracts expire in 2004. There also was evidence to demonstrate that deregulation will make little, if any, difference to consumer prices. This decision will protect jobs and economic activity in regional New South Wales, despite members of the Opposition pressuring the Government to speed up implementation of competition policy. Although the Government takes competition policy seriously, it is also careful to consider its impacts on rural and regional New South Wales. There are 320 poultry growers in New South Wales. They are from western Sydney, the Hunter, the North Coast, Tamworth, Goulburn, the Riverina and the Central Coast. Poultry farming contributes \$150 million to the regional economy. The industry supports 2,939 farm jobs, 8,700 jobs industry-wide and 35,000 indirect jobs. It underpins a \$1.35 billion retail sales market both domestically and overseas.

**The Hon. Michael Egan:** I eat a fair amount of that.

**The Hon. JOHN DELLA BOSCA:** The Leader of the Government eats a fair amount of that. The Leader of the Opposition should, and then he would be healthier. There is one dark cloud on the horizon and that is the possibility that the Federal Howard-Anderson Government, through the National Competition Council, will not accept the continuation of regulations for the New South Wales poultry industry. They may argue that the industry should be deregulated, despite our view that there is a benefit to maintaining the regulations when all factors are considered.

**The Hon. Dr Brian Pezzutti:** Point of order: The Minister is misleading the House. The biggest cloud over the poultry industry is the Australian Competition and Consumer Commission and its operation. The Minister knows that so why does he not say so. If he does not know that, he does not understand the industry and he should not be answering the question.

**The PRESIDENT:** Order! There is no point of order. I have warned the Hon. Dr Brian Pezzutti before about using points of order to make debating points. The Minister may proceed.

**The Hon. JOHN DELLA BOSCA:** If so— [*Time expired.*]

**The Hon. PETER PRIMROSE:** I ask a supplementary question. Will the Minister elucidate further on his answer?

**The Hon. JOHN DELLA BOSCA:** If so, the Commonwealth Government could impose a substantial financial penalty on New South Wales under competition policy if we continue to fight deregulation of the industry on behalf of poultry farmers in New South Wales. There is concern at the imbalance of power between poultry processors and growers. Many of the small producers are extremely marginal and we will need to keep the future of their industry carefully under review. Deregulation of the industry under these circumstances is not in anyone's interests.

## SAFE PRINTING PROCESSES

**The Hon. ALAN CORBETT:** My question is to the Minister for Mineral Resources, representing the Minister for Public Works and Services. Is it a fact that publications can now be printed on acid-free, elemental

chlorine-free paper using soy-based ink? Is it also a fact that this printing process will reduce and possibly eliminate the use of toxic solvents, resulting in less harmful chemical exposures of workers and readers? Given that this option now exists and in the interests of public health will the Government ensure that all government publications are printed using the least toxic printing processes? If not, why not?

**The Hon. EDDIE OBEID:** I thank the Hon. Alan Corbett for a very important and sensitive question. I have no doubt that my colleague the Minister for Public Works and Services, the Hon. Morris Iemma, will be keen to look at the issue. I will come back to the House with an answer.

#### **DEPARTMENT OF JUVENILE JUSTICE EMPLOYEE BEHAVIOUR**

**The Hon. PATRICIA FORSYTHE:** My question without notice is to the Minister for Juvenile Justice. Was a complaint made recently by staff at Gosford Hospital about inappropriate behaviour by an employee of the Department of Juvenile Justice while on escort duty of a detainee to the hospital? Has any action been taken against the employee? If not, why not?

**The Hon. CARMEL TEBBUTT:** I am not aware of any specific complaint that has been made by Gosford Hospital staff about an employee of the Department of Juvenile Justice. Nonetheless, if the honourable member would like to make available further details, I will follow up the matter. If an employee of the Department of Juvenile Justice in any way has breached the code of conduct that departmental employees are obliged to follow, the department would take appropriate action.

#### **QBE INSURANCE SYDNEY OLYMPIC PARK RELOCATION**

**The Hon. MICHAEL COSTA:** My question is to the Treasurer, and Minister for State Development. Can he advise the House of the latest development at Sydney Olympic Park?

**The Hon. MICHAEL EGAN:** I most certainly can. I am delighted to report that today QBE Insurance has announced that it will be moving to Sydney Olympic Park.

**The Hon. Tony Kelly:** They are my next-door neighbours.

**The Hon. MICHAEL EGAN:** They will not be for long because they are moving to Sydney Olympic Park. That is a huge vote of confidence in the future of the site and, as the Minister responsible for Sydney Olympic Park, I am delighted to welcome them. Companies are attracted to the park because of its location at the geographic heart of Sydney, its major transport links and attractive lifestyle. From January next year QBE, one of Australia's greatest insurance companies, will progressively move a total of 300 employees into No. 3 Figtree Drive, which is part of the Australia Centre precinct. This will allow QBE to streamline its administrative functions by combining information technology staff who were previously located in the city and at Rhodes. QBE's move comes after the release in June this year of a new draft master plan for Sydney Olympic Park, together with a request for proposals for future development. I understand QBE's decision to move was influenced by the central location of the building at Sydney Olympic Park.

This Government is determined to build on the legacy of the best Games ever by encouraging a vibrant commercial, residential and recreational future for Sydney Olympic Park. Already a number of organisations have leapt at the chance to be part of the park's future. They include Samsung, Daewoo, ACER Computer Australia Pty Ltd, New South Wales Lotteries, Orlando Wyndham Group Pty Ltd, BP Solar Pty Ltd, the New South Wales Department of Sport and Recreation, the Sydney Olympic Park Authority and the Royal Agricultural Society of New South Wales. These organisations are voting with their feet. Sydney Olympic Park is already shaping up as a great place in Sydney to live, work and play.

#### **FIREFIGHTERS OCCUPATIONAL HEALTH AND SAFETY**

**The Hon. MALCOLM JONES:** I directed my question to the Minister for Juvenile Justice, representing the Minister for the Environment. Will National Parks and Wildlife Service firefighters benefit from the occupational health and safety practices developed and implemented recently by South Australian parks and wildlife firefighters in an effort to protect them when doing their dangerous job?

**The Hon. CARMEL TEBBUTT:** I cannot say whether National Parks and Wildlife Service staff will benefit from the South Australian occupational health and safety standards for firefighting as I do not know

what those standards are. The honourable member's question obviously has a history of which I am not aware, so I will refer the matter to the Minister for the Environment and undertake to provide a response as soon as possible.

### COMMERCIAL FISHING INDUSTRY COMPENSATION

**The Hon. JENNIFER GARDINER:** My question is to the Minister for Fisheries. Is the Minister aware that the Fisheries Management Act 1994 contains a provision that allows him to increase the catch history of commercial fishers who are unable to engage in usual fishing activities because of their duties as representatives of the commercial fishing industry? Has the Government considered this provision when estimating the value of buyback offers to commercial fishers following the closure of commercial fishing in recreational fishing areas? If so, what is the outcome of the Government's consideration?

**The Hon. EDDIE OBEID:** That very important question requires a detailed answer. I am aware of that section of the Fisheries Management Act, but, as the Hon. Jennifer Gardiner will know, the assessment of catch entitlement for each commercial fisher is set. To the best of my knowledge—I am not certain about this point—fishers are paid for their representation on the various advisory committees. I have not considered whether they should be compensated by increasing their catch entitlements simply because they serve on those committees, but that idea is worth careful consideration.

### INDUSTRIAL RELATIONS COMPLIANCE CAMPAIGNS

**The Hon. RON DYER:** My question is to the Special Minister of State, and Minister for Industrial Relations. Can the Minister inform the House about the Government's industrial relations compliance campaigns?

**The Hon. JOHN DELLA BOSCA:** I thank the Hon. Ron Dyer for that question and I am happy to give him an accurate and detailed answer. I recently informed the House of a series of education and compliance campaigns that the New South Wales Department of Industrial Relations is conducting across New South Wales industries.

*[Interruption]*

I am again disappointed to hear that the Leader of the Opposition is well behind the run of play on policy in his portfolio. The other night I met a group of employers, including those from the big end of town, subcontractors, designers and employers from the engineering services industry.

**The Hon. Michael Gallacher:** Was it Saturday night?

**The Hon. JOHN DELLA BOSCA:** No, I think it was Friday night—it was one night this week or last week. The function was held at the country embassy at the offices of the Department of State and Regional Development.

**The Hon. Michael Egan:** That's a good facility.

**The Hon. JOHN DELLA BOSCA:** Yes, it is. We gave awards to employers for improved observation of the memorandum of understanding between principal contractors—

**The Hon. Michael Gallacher:** Did they ask you when the workers compensation premiums are coming down?

**The Hon. JOHN DELLA BOSCA:** They wanted to know how the Leader of the Opposition intended to vote. They wanted to know whether he would support them this time. Employers are cranky with the Leader of the Opposition. I got a pretty good reception but the Leader of the Opposition would not have been so well received. The change in corporate culture is overwhelming. Major employers throughout the employment sector are becoming increasingly understanding and are focusing upon industrial relations compliance both as a cost-cutting and productivity measure and as a proper employment obligation to provide safe workplaces for their employees. Those in the private sector are a long way ahead of the Opposition. Compliance and education campaigns are not about beating up on the employers; they are about disseminating information and giving employers the tools to provide the safer and more productive workplaces that they want to provide.

In the first stage of these campaigns, the department provides targeted employers with free information about their legal obligations, including copies of awards, legislation and other relevant material. Free advice about a range of industrial matters is also offered to them. Workplace inspections are then carried out, and the department considers prosecution action only if education and mediation fails to rectify breaches of the law. The Director-General of the Department of Industrial Relations has advised me that the department has commenced an industry compliance campaign covering cherry orchards around Young. The campaign was initiated as a result of the department's concerns about the level of compliance with the New South Wales Horticultural Industry (State) Award, following complaints received and discussions with various industry parties—not just unions but a wide variety of growers.

It is important to note that on 1 November 2001 the New South Wales Industrial Relations Commission increased pay rates for farm workers under the award. The department has concerns that some orchardists—a minority—may not be aware when hiring pickers for this season that these rates have been increased. Therefore, the department has provided information kits to 45 orchards in the district, as well as to a number of accountants, auditors and employment agencies that farmers use when recruiting cherry pickers. These kits include an up-to-date copy of the award. This means that all orchards will be able to meet their obligation under section 361 of the Industrial Relations Act 1996 to display a current copy of the relevant award in the workplace.

### ROAD TUNNEL AIR FILTRATION

**The Hon. RICHARD JONES:** I direct my question to the Minister for Mineral Resources, and Minister for Fisheries, representing the Minister for Transport, and Minister for Roads. Is the Drammen tunnel in Norway now open, with four particulate matter filters working at an average of more than 95 per cent efficiency? Will there be nine new tunnels built in Korea over the next three years, which will all have particulate matter filtration? Do more than 20 tunnels in Japan now have particulate matter filtration and are more than 1,000 kilometres of tunnels planned in Japan that will all be filtered? Has the Roads and Traffic Authority [RTA] informed the Minister of these developments and the fact that filtration is working in all these tunnels? If not, why not? Will the Minister inform himself about the effectiveness of filtration and demand that the RTA give him the complete picture? Finally, will the Minister do the right thing and filter the stack venting the M5 East tunnel?

**The Hon. EDDIE OBEID:** I am not aware of the exhaust systems in the various countries to which the honourable member has referred. I am sure that my colleague the Minister for Transport, and Minister for Roads has that information, and I will seek to get the Hon. Richard Jones an answer to that important question, which deserves a detailed response.

### PACIFIC HIGHWAY DUAL CARRIAGEWAY

**The Hon. Dr BRIAN PEZZUTTI:** My question is not directed to the Treasurer because he does not answer my questions, nor is it directed to the Minister for Industrial Relations because he gives inaccurate answers. It is directed to the Hon. Eddie Obeid, representing the Minister for Roads. Since 1991, 54 per cent of the Pacific Highway has been dual carriageway, the death toll is down by 50 per cent and the casualty rate is down by 64 per cent in spite of a 48 per cent increase in traffic. These are good figures. What is planned from 2006 when the current money plan runs out and when only 50 per cent of the 700-kilometre section of the highway north of Newcastle to the Queensland border will be completed as a dual-divided highway?

**The Hon. EDDIE OBEID:** No doubt they are worthwhile statistics and we are all pleased to hear that there have been fewer fatalities on this stretch of road. I am sure my colleague Minister Scully will have the appropriate answer.

### INTERNATIONAL REGIONAL HEADQUARTERS

**The Hon. IAN WEST:** My question without notice is to the Treasurer, and Minister for State Development. Can the Treasurer update the House on the Government's regional headquarters activities?

**The Hon. MICHAEL EGAN:** This morning, bright and early at 7.30 a.m., I had the pleasure of co-hosting with global location specialist Mr Dan Malachuk, a New York-based consultant with Andersens, a business directors' breakfast on regional headquarters. With over 90 senior executives in attendance, the breakfast, which was held at Andersens' George Street offices, was an excellent opportunity to hear via satellite



from New York the views of one of the world's leaders in location services. As a senior authority working with companies on how to assess location decisions, Mr Malachuk discussed the global business implications of the events of 11 September and spoke on the potential of Sydney as a safe location for regional headquarters.

Mr Malachuk's recent business location clients include companies from telecommunications, petroleum, financial services, major insurance companies, manufacturing, transport and consumer products, as well as several of the world's largest banks. Increasingly, corporations are establishing specialised regional and global operating centres for reasons of efficiency and cost effectiveness, and Sydney continues to be the city of choice as the low-risk high-growth base for business in the Asia-Pacific. Our success in attracting regional offices is due to a number of factors, including the fact that we have a proven and skilled multilingual work force that has a reputation for creative and innovative thinking, and we have world-class information and communications technology.

I point out also that from 1991 to 2000 Australia's real growth was 41 per cent compared to growth in the United States of America of 37 per cent—of course, the United States is considered worldwide as the country that experienced huge growth over that decade. Japan meanwhile had 12 per cent growth. Our growth exceeded growth in those countries in spite of the Asian financial crisis and current downturn particularly affecting our Asian neighbours. Dunn and Bradstreet tell us that we have 3,300 foreign companies in Australia and, at last count, Australia had almost 500 regional headquarters, 60 per cent of which I am never slow to boast are located in Sydney. This is testimony to our success as a business location. Despite the downturn in the world economy, companies are still coming here—last week we heard from the Japanese corporation Kyocera Mita, which I mentioned yesterday, and JP Morgan.

**The Hon. Dr Brian Pezzutti:** I have a Kyocera mobile telephone.

**The Hon. MICHAEL EGAN:** I invite honourable members to explore Kyocera printers and photocopiers, which are one and the same thing. Kyocera Mita has fused computer and photocopying technology, resulting in huge cost savings, particularly for large-volume users of photocopiers. This morning we had the rare opportunity of hearing from a man who spends his life assisting companies to assess their location choices. It was great hearing his views about Australia's prospects in attracting regional headquarters in a post-11 September world.

## NURSES HEALTH

**The Hon. ELAINE NILE:** I direct my question without notice to the Treasurer, representing the Minister for Health. Is it a fact according to the New South Wales Nurses Registration Board that an increasing number of stressed nurses are developing drug addictions? Is it a fact that the number of nurses being monitored for mental health problems, including alcohol and drug addiction, increased from 33 in 1997 to 174 in 2001 and that the number of impairment cases reported each year has increased from 29 in 1998 to 40 in 2000? What is the Government's plan to deal with this horrendous problem of the increasing number of nurses with alcohol and/or drug addictions? What effect does this have on patients in hospital?

**The Hon. MICHAEL EGAN:** The Hon. Elaine Nile asks an important question. I am not aware of the matters or details to which she refers, but certainly her question raises serious matters of concern. I will refer it to my colleague the Minister for Health for his considered response.

## ALSTONVILLE BYPASS

**The Hon. DOUG MOPPETT:** My question is to the Treasurer, who I am sure would accept the assertion that the traffic count through Alstonville in the northern rivers region of New South Wales registers 18,000 vehicles a day through the main street. In view of the fact that the planning of the bypass has been completed, will the Treasurer commit the funds necessary for the construction of this vital bypass to ensure the safety of pedestrians, particularly children, negotiating the main street of Alstonville?

**The Hon. MICHAEL EGAN:** I thank the Hon. Doug Moppett for his question, but I do not accept the assertion because I am not in a position to know. However, I will ascertain from my colleague the Minister for Transport whether that assertion is correct. I am sure the Hon. Doug Moppett would not wittingly mislead the House; he is usually well informed. I shall have his assertion either confirmed or queried by my colleague the Minister for Transport. I am familiar with Alstonville. I first visited there with a former Minister for Health, the Hon. Kevin Stewart, back in 1979. In fact, I toured the northern regions of this State with him for four or five days. It was very informative and entertaining.

**The Hon. Dr Brian Pezzutti:** You must have been a child at the time.

**The Hon. MICHAEL EGAN:** No, I was a bright, bushy-eyed young member of Parliament. I was about 30 years of age. I had just been elected to this Parliament after my fourth attempt. It was a long time ago.

**The Hon. John Della Bosca:** Alstonville has changed since then.

**The Hon. MICHAEL EGAN:** Alstonville has changed, but I remember going there. We went to an avocado farm, a very impressive operation. We toured other parts of the northern region of the State. We had dinner one night with Bishop Satterthwaite, who I think is still the bishop in that area.

**The Hon. Dr Brian Pezzutti:** No, he is retiring today.

**The Hon. MICHAEL EGAN:** He was a very nice man. We stayed at the old nurses home in Coraki, where Michael Yabsley's family lived. I remember one morning going for an early morning jog. I did not have my jogging shoes and I made a terrible mess of my feet. I thank the Hon. Doug Moppett for bringing back those happy memories of my visit to Alstonville and other parts of the northern region in 1979.

**The Hon. DOUG MOPPETT:** I ask a supplementary question. Given the Treasurer's familiarity with Alstonville and the pressures on the traffic flows through that town, would he assure the House that if necessary he would be prepared to make a Treasurer's Advance or funds available under section 22 of the Act if the Minister for Roads does not have the project already in his allocation?

**The Hon. MICHAEL EGAN:** As the honourable member would be aware, we have a record roads budget this year. I can assure the honourable member that the roads budget in the forthcoming budget, which will probably be brought down around the end of May next year, will also contain a very satisfactory allocation for roads throughout New South Wales. We are proud of the fact that we are spending more on country and regional roads than any previous Government has spent in the history of New South Wales or, for that matter, any State Government in any State in the whole history of this country. I am very proud of that phenomenal achievement. I am sure that, in one way or another, the good residents of Alstonville are already benefiting from that record roads budget and they will continue to benefit from the increased allocations that I am sure we will make to roads each and every year.

#### ROAD TUNNEL AIR FILTRATION

**The Hon. HENRY TSANG:** Further to the question asked by the Hon. Richard Jones about filtration systems for tunnels in Tokyo, I ask a question without notice of the Treasurer, and Minister for State Development. Will the Minister provide his expert opinion on filtration systems?

**The Hon. John Jobling:** Point of order: The honourable member clearly asked for an opinion, which is against the standing orders, and you should rule the question out of order.

**The PRESIDENT:** Order! The honourable member may rephrase his question if he is able to do so within the time remaining to him to ask a question.

**The Hon. HENRY TSANG:** Will the Minister provide a detailed report on the filtration system?

**The Hon. Duncan Gay:** Point of order: Madam President, you have ruled that a member cannot re-ask a question if the Minister has started to answer, as he had—and that is attested to by the fact that the clock had started to move. You do not permit members of the Opposition to re-ask a question once the Minister has started to answer.

**The Hon. Jan Burnswoods:** To the point of order: Yesterday I took a point of order to the effect that the Hon. Duncan Gay had taken a point of order after the Minister had started answering a question, but you did not rule favourably on my point of order.

**The Hon. Michael Gallacher:** To the point of order: I remind you of your practice, Madam President, that when a question is ruled out of order you give the call to the next member wishing to ask a separate question from the one ruled out of order. The member who asked the question that had been ruled out of order then goes back into the queue. I would ask you to apply your previous ruling.

**The PRESIDENT:** Order! To clarify the issue: I will in the future, as I have in the past, allow members to rephrase their questions, so long as they are able to do so within the two minute period. I will regard a Minister as having commenced to answer a question when the Minister has actually commenced to speak and not when the clock is started.

**The Hon. Patricia Forsythe:** So you are ruling against the Hon. Henry Tsang?

**The PRESIDENT:** No, the Minister had not started to speak.

**The Hon. Patricia Forsythe:** He had.

**The PRESIDENT:** In that case, the Hon. Henry Tsang may ask the rephrased question when he is next given the call.

#### OFFICE OF THE PUBLIC GUARDIAN

**Reverend the Hon. FRED NILE:** My question without notice is directed to the Treasurer, representing the Attorney General. With regard to property and assets of people placed under the care of the Office of the Public Guardian, does the Public Guardian arrange for a detailed inventory and record the location of storage so that the Public Guardian remains accountable for the security of these items? Have there been examples of theft or disappearance of such property? If so, has such activity been investigated and the perpetrators prosecuted? Will the Attorney General advise who are the beneficiaries of the sale of the real estate of people coming under the Office of the Public Guardian?

**The Hon. MICHAEL EGAN:** I do not know the answer to the honourable member's question. I will refer it to my colleague and obtain a response for him as soon as possible.

#### WORKERS COMPENSATION COMMISSION PRESIDENT

**The Hon. JOHN JOBLING:** My question is to the Minister for Industrial Relations. Will the Minister advise the House what the salary of the President of the new Workers Compensation Commission will be? By how much has Justice Sheahan's salary of office increased following Cabinet's late-night appointment of him as President of the new Workers Compensation Commission?

**The Hon. Michael Egan:** Point of order: It is a longstanding precedent that questions should not be asked about matters that are on the public record. All honourable members would know that the remuneration of judges and other office holders is a matter of public record.

**The Hon. JOHN JOBLING:** To the point of order: as I understand it the appointment of the President of the new Workers Compensation Commission was made last night. I would be very interested to know where this information appears on the public record. It obviously is not, and therefore the question is valid.

**The Hon. JOHN DELLA BOSCA:** The head of jurisdiction payments, as the Leader of the Government has already said, is a matter of public record. It is a decision of the Remuneration Tribunal and published annually—

**The PRESIDENT:** Order! Is the Minister speaking to the point of order?

**The Hon. JOHN DELLA BOSCA:** No, I was answering the question.

**The PRESIDENT:** Order! I have not ruled on the point of order. It is not necessarily a tradition that questions cannot be asked about issues that are on the public record. Obviously, however, to do so would be silly. I rule the question in order, but the Minister does not have to answer it.

**The Hon. JOHN DELLA BOSCA:** I thank you for your advice, Madam President. I have no objection to disclosing the salaries of judicial officers. As I was saying before the point of order was taken, so far as I am aware, and I am confident I am right, determinations as to judges salaries are part of the public record. It is churlish of the Opposition to start asking questions about the remuneration of judges. But I am happy to provide that detail to the Opposition. In relation to the reference by the Hon. John Jobling to a late-night appointment, I explained previously that some time ago Cabinet appointed Justice Sheahan to the position

he now holds. I have been a Cabinet Minister for a relatively short time but the timing of the announcement of similar appointments about which I have knowledge is left to the Premier or, in some cases, the portfolio Minister. The timing is consistent with normal practice, and that is at the time at which individuals take up their various positions to maintain the timetable for the new dispute resolution organisations to start their operations. There is nothing late night, surprising or unusual about that.

**The Hon. JOHN JOBLING:** I ask a supplementary question. Given the Minister's answer, what assurance can he give to the House, as the responsible Minister, that Justice Sheahan has suitable qualifications in this jurisdiction when he has not practised in it for more than 27 years?

**The Hon. Amanda Fazio:** Point of order: I would ask that you rule that question out of order. It is not a supplementary question. It is not seeking further information following on from the honourable member's previous question. It is a separate question.

**The Hon. JOHN JOBLING:** To the point of order: It follows on from the previous question, which related to the appointment of Justice Sheahan as the President of the new Workers Compensation Tribunal. I was asking for an assurance from the Minister about the appointment of that person.

**The PRESIDENT:** Order! The sessional order relating to supplementary questions is clear: a supplementary question may be asked to elucidate further information having regard to the answer of the Minister. I rule the question in order.

**The Hon. JOHN DELLA BOSCA:** I am happy to answer, but I have to say that I am disappointed that the Hon. John Jobling would put on the record a deceptive and mendacious allegation. Frankly, I am deeply disappointed that honourable members opposite are always—

**The Hon. John Jobling:** What a hypocrite you are.

**The Hon. JOHN DELLA BOSCA:** I am not a hypocrite, the members opposite are hypocrites. They have made a political football of the issue. Let me say that, most recently, Justice Sheahan has been an outstanding judge. The Hon. Patricia Forsythe is nodding her head in agreement because she knows it is a fact. He was an outstanding judge in the planning and environment jurisdiction, not an easy jurisdiction for the judiciary. He has, by general acknowledgment, been one of the outstanding judges in that jurisdiction in the past four or five years. Prior to that he was a consultant with a major legal and accounting firm—

**The Hon. Michael Egan:** He was the managing partner!

**The Hon. JOHN DELLA BOSCA:** I am coming to that. He was a consultant with, if not PriceWaterhouseCoopers, then certainly one of the major legal and accounting firms. He ran that organisation's mediation practice. The boneheads opposite do not understand! We are talking about alternative dispute resolution. He is the judge from central casting for this job. The position encompasses his entire professional qualifications. Prior to his consultancy work he was the managing partner of a major law firm, and a firm with impeccable conservative credentials, I might say.

**The Hon. Janelle Saffin:** Dunhill Madden Butler.

**The Hon. JOHN DELLA BOSCA:** No, it was not Dunhill Madden Butler. I cannot think what it was. The Hon. Patricia Forsythe knows who it was. [*Time expired.*]

#### SENIOR YOUTH WORKERS RECRUITMENT

**The Hon. JANELLE SAFFIN:** My question without notice is to the Minister for Juvenile Justice. Will the Minister advise the House of the action being taken by the Department of Juvenile Justice to boost the recruitment of senior youth workers for its detention centres?

**The Hon. CARMEL TEBBUTT:** The Department of Juvenile Justice faces a constant challenge in recruiting sufficient numbers of people with the right balance of skills, temperament and experience to fulfil the role of senior youth worker. I think most members of this House would be familiar with the fact that it is not an easy job. It is, nonetheless, a job that can be immensely rewarding to those who are able to play a role in the rehabilitation of young offenders. Senior youth workers are the direct care officers who maintain safety and

security at the centres. They supervise detainees at all times and help to deliver training and rehabilitative programs to them. They are the backbone of the staff of detention centres for young offenders. The Department of Juvenile Justice employs 352 designated senior youth workers at the nine detention centres in New South Wales.

Together with other specialist staff, including caseworkers and teachers, senior youth workers play an important role in helping detainees gain skills and knowledge for their return to the community as responsible citizens. In the last few years the Government has moved to upgrade the role of senior youth worker and make it more attractive to the type of person best fitted to that special sort of work, including improved training and qualification levels. The Council on the Cost and Quality of Government recently recommended changes in the staffing and structure of detention centres. I believe these changes will impact strongly and positively upon the role of the senior youth worker and provide for better career paths and greater job satisfaction.

The department is in the process of consulting staff on the implementation of these recommendations, with final decisions to be made before the end of the year. In the meantime, one of the more practical steps the department has taken has been the recent production of a video to assist in the recruitment of senior youth workers. It is no doubt the case that many people, while broadly familiar with the Department of Juvenile Justice, are not necessarily familiar with the work of a senior youth worker. It is a challenge for the department to be able to convey to people the type of activities than a senior youth worker would be involved in and the video is an important part of that process. It is a professional production that gives an accurate picture of the working environment and conditions in detention centres, and describes the responsibilities of a senior youth worker.

The video also explains very clearly the requirements and steps that must be taken to pursue a career in this work. It is used extensively at information sessions that the department holds for people who respond to advertisements calling for applications to become senior youth workers. I am advised by the department that the video has been very well received. It is proving highly effective in conveying important information quickly and accurately on the role of senior youth workers. The video's positive image of senior youth workers in the juvenile justice system will play an important part in the recruitment process.

It is true that at least some of the success can be attributed to the presenter who appears in the video, former football star now television personality, Paul Harragon—otherwise known as "The Chief". Mr Harragon devoted a great deal of time to the making of the video. He spent the day at the Frank Baxter Juvenile Justice Centre, near Gosford, filming and chatting with detainees and staff, who obviously appreciated his commitment to the project. I would like to echo that appreciation. Using someone such as Paul Harragon can be beneficial in getting the message across quickly, and also, of course, in drawing people's attention to what we are attempting to convey. I might say that Mr Harragon's visit to the centre also had a positive effect on detainees, most of whom are avid rugby league followers who regard Mr Harragon as a living legend.

#### **ASYLUM SEEKERS RESETTLEMENT**

**Ms LEE RHIANNON:** I direct my question to the Treasurer, representing the Premier. Does the Treasurer believe that this State's international standing and ability to attract investment are being jeopardised by the Federal Government's denial of Australia's responsibility to accept asylum seekers? Given the speculated impending request from the United States of America for Australia to settle Afghani refugees, will the Government move to protect New South Wales' international reputation and provide moral leadership by declaring that New South Wales is willing to accept refugees for resettlement? Will these people be placed humanely in the New South Wales community or will they be shunted to immigration Minister Ruddock's discredited detention centres?

**The Hon. MICHAEL EGAN:** Ms Lee Rhiannon should not, for political purposes, seek to diminish or disparage Australia's proud record, certainly over more than 50 years, of welcoming migrants and refugees. In any event, the honourable member's question does not concern the public affairs of this State; it concerns the policies of the Federal Government.

#### **PUBLIC LIABILITY INSURANCE**

**The Hon. JOHN RYAN:** I ask the Minister for Juvenile Justice a question without notice. Has the Minister investigated the threat to the future of programs such as the New South Wales Duke of Edinburgh's Award Scheme, scouts, guides and the Boys Brigade in view of the fact that the adventure tourism industry is

not able to obtain any public liability insurance cover after December this year? What action has been taken to ensure that these vital programs for the development of our youth remain viable after December 2001, when public liability policies will not be renewed?

**The Hon. CARMEL TEBBUTT:** I am certainly familiar with some of the very good work done by organisations such as the Duke of Edinburgh's Award Scheme within the Department of Juvenile Justice. The group works with detainees, providing opportunities for them to participate in the award scheme. It gives detainees the opportunity to gain skills, build self-esteem and develop teamwork skills. On many occasions in this House I have commented on the very positive work that the Duke of Edinburgh's Award Scheme does within the juvenile justice system. Having said that, I advise the House that it does not fall within my specific responsibilities to comment on the issue of insurance liability. Nonetheless, I will be happy to follow-up the issue for the Hon. John Ryan. The reality is that many of the organisations that provide these types of programs play a really important role in terms of youth development, not only for young people within the juvenile justice system, but for young people across the State.

*[Interruption]*

I have indicated to the Hon. John Ryan that I am happy to follow up this issue for him. I am merely pointing out that it is not one that falls within my specific area of responsibility.

### CONSTRUCTION INDUSTRY SAFETY

**The Hon. JAN BURNSWOODS:** Will the Special Minister of State and Minister for Industrial Relations inform the House about safety issues in the building industry?

**The Hon. JOHN DELLA BOSCA:** As I said in a previous answer, earlier this week I attended the construction industry awards for best practice in occupational health and safety. Some very good news has emerged from the construction industry: the occupational health and safety measures initiated by this Government have developed and achieved a 31 per cent fall in injury and disease in the construction industry over the last five years—that is, fewer people are being hurt at work. The improvement is especially pleasing as it occurred during the biggest boom in construction industry activity in Australia's history: the lead-up to the Sydney Olympic Games. However, the rate of fatality, injury and disease remains unacceptably high. A major report on the construction industry, "Safety Building New South Wales", has been produced by WorkCover.

The report details the results of New South Wales initiatives to improve occupational health and safety practices. The report provides a blueprint for further improvement in the way the construction industry manages workplace safety. WorkCover has also produced a construction safety kit, which was launched this week. It contains 12 occupational health and safety management tools to provide assistance to business. They include safe design, hazard management, contractor management, line management training and performance measurement. Through these initiatives the Government will continue its successful effort to reduce accidents, injuries and disease in the workplace. Injury numbers are falling and the severity of injuries is reducing. Yet workers compensation costs and claims are rising. It is further reason for members opposite to assist the Government's efforts in this regard.

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

**Questions without notice concluded.**

*[The President left the chair at 1.03 p.m. The House resumed at 2.30 p.m.]*

### STANDING COMMITTEE ON LAW AND JUSTICE

#### Report: A New South Wales Bill of Rights

**Debate resumed from 24 October.**

**The Hon. DOUG MOPPETT** [2.30 p.m.]: I congratulate the Standing Committee on Law and Justice on this excellent report. I also congratulate the members of the committee, who have amplified the arguments they presented in the report. I am happy to take note of the report, which is a document that is noteworthy and

relevant to all the people of New South Wales. From time to time there are proposals in relation to vapid and evanescent notions of a bill of rights and a new order of things, almost like meteors or shooting stars in the sky. They generally fade away through lack of resonance in society. The proposal for a bill of rights has been a more enduring one and is, of course, considered to be a glib and beguiling argument by the inexperienced and those who simply are attracted to the euphonious nature of such a proposal. I suppose there is always likely to be some expressions of support for it.

The reason for the greater longevity of the proposal and its ability to endure as a background issue that comes up from time to time is the devoted attention given to it by people who suffer from a form of millenarianism—they believe that by advocating issues such as those that are sententious in nature they will somehow achieve an immortality and will be remembered as the people who proposed the bill of rights in either New South Wales or the Commonwealth of Australia. Rarely are they able to advance any sustained argument in favour of it; it is just the feel-good nature to them of something that is different and new. Other such movements have emerged, including the notion of citizens initiated referendums that constantly crops up—as if somehow or other the nature of our democracy would be improved by adopting an overseas notion that, in theory, is supposed to democratise the processes that we already have.

Wherever citizens-initiated referendums have been observed, they have been chaotic in their execution and, I believe, they lead to the failure of societies to reach clear decisions that have the support of the majority of people. Rather, they tend to encourage the idea that minority groups have an endless recourse to appeal and opposition to the will of the majority. That is one of the things that cuts counter to the essential basis of a democracy. We all tend to invoke democracy to support our arguments and sometimes do so because they are simply tendentious to the conclusions at which we have already arrived. We all credit the Greeks with the development of democracy, or at least its initial concept. Great philosophers such as Aristotle certainly had no great relish for democracy and he described it as mob rule. Aristotle thought that the idea of democracy—of everyone having a say—was counter to his sensitivities. However, we have all come to recognise that in a modern society we need to have a clear-cut way in which people can come to decisions, decisions that are in the interests of the majority. The decisions having been made, there must be some reliability about them so that people can get on with their lives and plan accordingly.

It is great that a committee—which did not have an agenda to pursue but simply had the task of examining proposals for a bill of rights—has come down with such a clear decision. Other views were expressed by the committee members and it was a pleasure to listen to them explaining lucidly, succinctly and clearly the reasons they produced the report that recommended against the concept of a bill of rights. I acknowledge that the pleasure I derived from the report was based on my wholehearted agreement with the conclusions of the committee. We have the most refined system of democracy and when people talk about rights in a free society I do not believe that they have to look beyond the shores of Australia for any example upon which one could say that the aspirations of mankind are better expressed.

I do not think we need to invoke the conventions of other countries simply because we do not have them. We in this country do not need to try to construct some sort of lack of rights and lack of freedoms to justify some move that is simply self-gratification for the proponents who, at best, parade meretricious arguments in a galaxy of confusing proposals and assertions that have done little to advance the cause of the ordinary person on the street. We can certainly rest assured, as can the chairman of the committee, the Hon. Ron Dyer, that this is not a proposal that is being shouted from the rooftops. It is not a slogan on the lips of thousands of people moving up and down the streets, agitating for change. The vast majority of Australians are very satisfied with the system in which we are governed. For them to take this opportunity to dispassionately examine a proposal and bring down their findings has been a very worthwhile piece of work and one which serves, first of all, to distinguish the members of the committee and the staff that worked on the report.

It is an excellent report that could not be assailed as being biased or in any way influenced by the personal views of the members. Beyond enhancing their reputations, the production of reports of this calibre does a great deal to uphold the reputation of the Legislative Council and its committee system. I thank and congratulate the members and staff, particularly the chairman of the committee, the Hon. Ron Dyer, on their excellent work. This report may gather a little dust as the proposal goes back into a period of acquiescence from which it occasionally emerges. Nevertheless, when the need arises the dust will be brushed off and it will be an excellent reference upon which to refute the spurious claims that are made from time to time in favour of the proposal for a bill of rights.

**The Hon. RON DYER** [2.42 p.m.], in reply: I sincerely thank all members of both the Standing Committee on Law and Justice and the House who have spoken during this take-note debate. I would like to

thank, in particular, the Deputy Chair of the committee, the Hon. John Ryan, who represents the Liberal Party on the committee, for his contribution to the debate and his very kind remarks concerning me. The Hon. John Ryan said that he did not wish to announce my retirement from politics but when I do take that step—which I have said publicly will be at the next election—I could take pride in this report. I thank the honourable member for that. As a matter of fact, yesterday evening I attended a drinks function at the invitation of the New South Wales Bar Association, and the newly elected President of the Bar Association, Mr Bret Walker, SC, said that I and the committee could regard this report as one of which we could be proud.

I note that he was a very significant witness before the inquiry. He said that in legal gatherings around Australia the report has been regarded as a very worthwhile contribution to the debate on a bill of rights and a very thorough consideration of this topic. I think that is the case whether or not the members of the legal profession in question happen to agree with the outcome. Whether they do or do not, they still regard this report as a very thorough one and a very carefully considered treatment of the subject. However, it must be said that the legal profession is of two minds regarding the question of a bill of rights. There were witnesses who appeared before the committee who argued strongly in favour of a bill of rights and there were others, such as Mr Walker and the former Chief Judge in Equity of New South Wales, Mr Justice McLelland, who gave evidence to the committee opposing a bill of rights. On the other hand, there were groups such as Australian Lawyers for Human Rights and others who argued to the contrary.

The Hon. Peter Breen also said during this take-note debate that academic commentators, including one at Macquarie University, have told their students that the committee's report is the best resource available on the Internet in Australia on the subject of a bill of rights. I take some pride in acknowledging those supportive comments made in the legal and academic community. Once again I would like to thank both my committee members and the staff of the committee, especially Mr Steven Reynolds, the senior project officer of the committee, who put so much effort, care and attention into the production of the report. I would like to say something in particular regarding the very careful and thorough contribution to the debate made on a previous occasion by the Hon. Don Harwin, who concentrated his contribution on the recommendations made by the committee regarding the establishment of a scrutiny of bills committee.

The Hon. Don Harwin serves on the Regulation Review Committee and I mention in passing that that committee has invited me, as Chair of the Standing Committee on Law and Justice, to attend its meeting tomorrow morning for the purpose of explaining the recommendations that we have made in regard to the establishment of a scrutiny of bills committee. The Hon. Don Harwin outlined the history of attempts made initially to establish the Scrutiny of Bills Committee in the Australian Senate, and I think I am correct in saying that he more or less cautioned me and other committee members that perhaps a struggle lies ahead before a scrutiny of bills committee is established. He based that comment on the undoubted struggle and the substantial efforts that had to be made by the late Senator Alan Missen, in particular, to establish the Senate committee, which was eventually established during the period of government of the Hon. Malcolm Fraser at the end of 1981.

The Law and Justice Committee believes the report will have a positive outcome by virtue of our recommendation regarding the creation of a scrutiny of bills committee. The criticisms of a bill of rights—that we are essentially politicising the judiciary or, alternatively, judicialising a political function—could not be levelled at such a committee. By establishing a scrutiny of bills committee we will keep this function within the legislature, where the committee believes it should remain. We have recommended that the scrutiny of bills committee should be a joint committee as we believe that, like the Regulation Review Committee, this function should be the property of the whole Parliament.

As its name implies, the Senate committee is a single House model, as is the Queensland committee—although it can be nothing else as there is only one House of Parliament in that State. We believe that the Regulation Review Committee works well as a joint House committee and that a scrutiny of bills committee would work equally well. However, one contentious issue has arisen from our inquiry. We believe that, ideally, the scrutiny of bills committee should be a single-function rather than a dual-function committee. It would be preferable to establish a new committee that represents both Houses of Parliament rather than grafting the additional scrutiny of bills function onto the existing responsibilities of the Regulation Review Committee. We take that view mainly because we feel that it would be an undue burden on the committee tasked with discharging those functions if it had to review both subordinate legislation and statute law.

That problem can be overcome to some extent by resourcing the committee appropriately. However, the additional responsibility of scrutinising bills would be a substantial burden on the Regulation Review



Committee. I do not claim that it could not discharge that task, but when we visited Queensland we were told that its scrutiny of bills committee, which must consider both delegated legislation and bills, typically meets for about three hours. That is a long time for a parliamentary committee to sit—particularly a committee such as the one we are contemplating that would have to sit regularly during sitting periods. We must also bear in mind the fact that the Government, in particular, would not thank us if there were undue delays in considering bills against the necessary criteria.

Therefore, members of the Law and Justice Committee believe it is desirable to establish the scrutiny of bills committee as an adequately resourced, single-function model so that appropriate and prompt attention may be paid to the committee's terms of reference, which are, in essence, to consider all bills that come before Parliament to ascertain whether they trespass unduly on personal rights and liberties. That is essentially the generalised terms of reference—the yardstick—that the Senate committee uses to consider bills. When considering appropriate terms of reference for the scrutiny of bills committee, the Law and Justice Committee examined those of both the Senate committee and the Queensland parliamentary model. The Queensland Parliament takes a quite different approach as it has what could be called a mini bill of rights. The committee must use 10 criteria to consider whether a bill should be subject to criticism or whether a matter should be drawn to the attention of the House.

Professor David Kinley is an expert academic witness who appeared before the Law and Justice Committee. He was, and to some extent still is, an adviser to the Senate committee and has also assisted the Queensland committee. He told us that he believed the Senate's approach was preferable. He said that, if there is rigid or systematic consideration against the 10 criteria to which I have referred, there tends to be an unduly mechanical approach to the matter: the boxes are ticked, metaphorically speaking, and other conclusions that the committee should draw are perhaps overlooked. On the other hand, if there is consideration of whether the bill in question trespasses unduly on personal rights and liberties—as occurs in the Senate committee—that formulation is sufficiently generalised to allow the committee to consider virtually any aspect against all sorts of criteria that might affect the personal rights of citizens of the State. The Hon. Don Harwin cautioned us to be patient. I hope that the Government will take the view that, like the Regulation Review Committee, a scrutiny of bills committee will be a success. I am patient—some have even said that I am stubborn.

**The Hon. John Jobling:** You have been known to be on occasion.

**The Hon. RON DYER:** That is true. When I first came to this place there was a committee of the Legislative Council called the Committee of Subordinate Legislation, which was chaired by the late Sir Adrian Solomons. Sir Adrian had my very great respect, and always will. There is absolutely no doubt that he was one of the outstanding members to serve during my now lengthy time in this place. However, that committee, through no fault of Sir Adrian's, did not operate well because it was not properly resourced. When I eventually became Chair of the committee I badgered the then Premier, the Hon. Neville Wran, to give it some resources. He eventually relented and provided a part-time researcher. I believe that the amount allocated might have been in the order of \$8,000. I was able to engage a legal academic from Macquarie University, Mr Graeme Wiffen, who did a very good job servicing the committee, albeit on a part-time basis.

So, from fairly humble origins the joint House Regulation Review Committee was established. It has a well-respected reputation for thoroughly and appropriately considering subordinate legislation. I believe that, as recommended by the Law and Justice Committee, a joint House scrutiny of legislation committee would—if appropriately resourced, which I stress—do an equally thorough job of scrutinising bills introduced into either House. If, however, the Government decided that the Regulation Review Committee should have the additional function of scrutinising bills—

**The Hon. Doug Moppett:** That would be the second best option.

**The Hon. RON DYER:** It would be second best, but it would be acceptable if there were adequate resourcing to enable it to do its job. As I said before, my main concern is that the committee with the joint function should not be unduly overloaded. I hesitate to think that the new committee would be happy to meet for three hours, as happens in Queensland, because that is a very long time for busy members of Parliament to spend on one committee. I thank the House for its consideration of the committee's report and I look forward in due course to the Government's response.

**Report noted.**

**STANDING COMMITTEE ON STATE DEVELOPMENT****Interim Report: Genetically Modified Food**

**Debate resumed from 24 October.**

**The Hon. TONY KELLY** [3.02 p.m.]: The Standing Committee on State Development's inquiry into genetically modified [GM] food has taken place against a backdrop of increasing community debate over the immediate and longer-term impact of the introduction of such technology into the Australian agricultural and food processing sectors. The debate over the past decade presents people and their governments with a number of dilemmas as to the future path that the State and the nation should take with GM food technology. These dilemmas and the arguments that have grown around them are related to the potentials inherent within genetically modified food technology—both the potential benefits and the potential detriments to the ongoing sustainability of our agricultural and food processing sectors.

The pros and cons of GM food technology have created a great deal of uncertainty throughout the agricultural and food sectors as well as throughout the broader community. These concerns and uncertainties were reflected in the reference of this issue to the committee by the Minister for Agriculture, Richard Amery, in November 1999. In his letter to the committee the Minister reflected on the claims and counter-claims about the potential costs and benefits of GM food technology—a debate that is led by those who see the benefits to the agricultural and food processing sectors and the environment as outweighing its possible costs, and by those who see its costs outweighing any possible benefit.

Consequently, the Minister felt that it was both timely and appropriate for the committee to examine the likely public and private benefits and the costs of GM food in New South Wales, the impact of GM food technology upon the agricultural and food processing sectors, and the identification of any possible adverse consequences on trade, food safety and the environment from the introduction of such technology. Over the past two years the committee has received submissions, held public hearings and undertaken a number of interstate and overseas study tours to gain a broader understanding of the impacts of such technologies on agriculture, food processing, the environment and human health, and of how other jurisdictions are responding to the immense challenges presented by this technology.

Prior to tabling this report the committee decided it was more appropriate at this stage to produce an interim report issues paper rather than a report containing a set of concrete recommendations for the Government to consider. We believed it was more important to look at the situation today and make a number of suggestions for issues to be examined. The committee felt that the complexity and critical nature of this area of public policy warranted further investigation and community input before a set of recommendations could be satisfactorily handed to the Government. Consequently, the committee highlighted 17 issues in the report, ranging from the economic and environmental impacts and the rights and responsibilities of producers of GM foods, to issues dealing with the precautionary principle, cost-effectiveness provisos, insurance, liability and criminal damage, through to reviews of Federal legislation, public information and labelling. These all reflected not only the broad and complex nature of the issue but also the further work required before a coherent policy approach to the many implications of GM food technology for the State can be recommended to the Government.

At this point I shall address one issue arising out of the committee's inquiry: commercial and trade implications. They exemplify many of the broader implications and arguments regarding the potential costs and benefits of GM food technology. Certain submissions received by the committee looked to the future world demand for food and the pressure placed on resources to meet that demand as a key argument in favour of introducing GM food technologies. Together with the potential to improve human health and economic efficiency, and reduce pressures on the environment, some believe that GM food technology is the most effective way of meeting future demand for food and, therefore, that the benefits far outweigh the possible risks associated with that technology.

Organisations such as the CSIRO look to these aspects of gene technology as vital to Australia's future, its increasingly fragile environment and its competitive position in world trade. During the committee's site visits to the CSIRO plant industry headquarters in Canberra we learned of the potential advantages of one genetically modified plant—the weevil-resistant pea. The pea was developed by the CSIRO as a possible way of preventing significant losses to the yield and quality of Australian field pea crops caused by pea weevil attacks. The CSIRO discovered that the humble kidney bean is not attacked by these weevils as it contains a gene that

inhibits the ability of the weevil to digest starch. Whereas traditional plant-breeding techniques have proven unsuccessful in transferring this trait to field peas, CSIRO scientists identified this protecting gene found in the kidney bean and subsequently introduced it into a variety of field pea.

These genetically modified peas have been shown to be 99 per cent resistant to pea weevil attack and the gene can now be transferred to other related varieties of pea using traditional cross-breeding techniques. The obvious advantage of taking this path is that it has the potential to reduce our heavy reliance on pesticides and herbicides, and in doing so may prove tremendously beneficial to our efforts to limit the adverse impact that pesticides and the like have on the environment and on human health.

On our trip to Bourke we inspected genetically modified cotton crops, whose introduction has had a significant effect on the reduction of pesticide use in that area. Instead of 10 or 12 applications of pesticide to combat moth, only two pesticide applications per season were required. In one instance, pesticide applications were reduced to nil. Genetically modified crops have been a significant advantage to the environment in the Bourke community. The arguments in favour of the introduction of GM food in Australia emphasise the potential benefits, such as increased pest and disease resistance, the ability to grow hardier crops in regions affected by salinity and drought, overall improvements in yield, quality and harvest efficiency, and the need for Australia to maintain pace with the rest of the world in relation to intellectual property rights over gene technology breakthroughs.

These sorts of arguments have been presented in favour of Australia embracing GM technology. Opposing these arguments are concerns that the introduction of GM food technology will ultimately have a negative effect on Australian agriculture, food processing and international trade. The arguments against the introduction of GM food include the potential damage that GM food technology may cause to the production process itself, as well as the negative impact on our international trade resulting from increasingly anti-GM markets in Europe and Japan. Those opposed to GM food are concerned about our ability to control the spread of crops and GM seeds, and the likely contamination of neighbouring traditional and organic crops.

Those putting that argument fear for the future of Australia's clean and green agricultural image, which capitalises on our island status as a marketing advantage that offers export growth in large and expanding markets in Japan and Europe. The Tasmanian State Government has imposed a genetically modified organisms [GMO] moratorium to prevent the growing of GM plant and plant materials. The moratorium was implemented by declaring GMOs as a pest under the Plant Quarantine Act 1997. The outlook of many from Tasmania is that the future is in promoting a State agricultural sector free from GM food technology. In the words of the Tasmanian Minister for Primary Industries, Water and Environment, David Llewellyn, with whom the committee met on its site visit to Tasmania earlier this year:

Tasmania as an island with a unique environment and associated agricultural advantages as a producer of clean quality produce must consider the issue of genetic modification in primary Industries very carefully.

Longer-term trade implications, together with other arguments that GM food technology increases the power and profits of large agrichemical companies to the detriment of farmers, and promotes loss of biodiversity and longer-term test resistance building up to GM crops, is evidence that, overwhelmingly, Australia's commercial interests lie in promoting traditional and organic methods rather than going down the path of GM food technology. Recent concerns and moves away from GM food in Japan and Europe, as well as increased trade tensions between pro-GM America and increasingly anti-GM Europe, are matters that the committee will keep a close eye on in the coming months. Arguments about the commercial implications of GM food technology are a microcosm of the wider debate surrounding this controversial public policy issue.

The potential quoted by one side is matched by equally valid concerns from the other. This is one of the reasons why the committee decided to release an interim report as an issues paper. The committee believes that more time is required to allow further investigation and community input on an issue where the arguments for and against are still being played out domestically and internationally. I recommend that other members of this House read the issues paper for themselves to ensure that they are up to speed with the latest on this most contentious area of public policy. The issues paper provides an informative background on GM food, what it is, the arguments for and against its introduction, and the approach and outlooks of the Federal and various State jurisdictions.

Whether GM food turns out to be the right or wrong path for the Australian agricultural and food-processing sector to pursue remains unclear, but there are strong arguments on either side. Therefore, the importance and wide-ranging impact of this issue on the future of Australia, its trade, its environment, and the

health of its citizens, warrants the closest attention that our elected representatives can give it. The interim report of the committee contains a list of issues that will serve as a strong foundation upon which further investigation and debate can take place within the State about the exact path that New South Wales should follow in its approach to GM food technologies. I look forward to leading the committee in its investigations on this critical matter for the future direction and development of the State.

In commending the interim report to the House I thank the committee members and staff involved in the preparation of the report and the issue paper so far: the Hon. Dr Brian Pezzutti, who is the deputy chairman of the committee, the Hon. Ian Cohen, the Hon. Michael Costa—I apologise for omitting him from the front of the paper—the Hon. John Johnson, who has retired but was, as always, an excellent member of the committee, having attended every single committee meeting and trip, the Hon. Ian Macdonald, and the Hon. Ian West, who joined us only recently. I also thank the committee secretariat: Steven Carr, Rob Stefanic, Stephen Fenn and Annie Marshall.

The issues listed are worthy of further debate and discussion both within the community and our committee. For example, because of continuous new developments and risks in gene technology, should a lesser standard of precaution be applied with respect to protection of the environment, particularly given the direct relationship of gene technology to human health? Should New South Wales gene technology legislation mirror legislation containing a definition of the precautionary principle that appears in the New South Wales Protection of the Environment Act 1991, to avoid inconsistency with the New South Wales environment legislation? That is something other honourable members might discuss in this debate.

Should the New South Wales Government urge the Federal Government to review the wording of the precautionary principle in the Gene Technology Act 2000 with a view to eliminating the words "cost effective" from the definition? Should the New South Wales Government develop policy guidelines regarding the release of GMOs in New South Wales that have been approved by the gene technology regulator [GTR]? Should the policy guidelines require the consideration of a number of factors in assessing individual GMO types, including the commercial position of GM-free status of certain New South Wales regions? I know that a number of regions in the State would prefer to be GMO free, just as some councils declared themselves to be nuclear free in years gone by.

**The Hon. Richard Jones:** They still are.

**The Hon. TONY KELLY:** And they still are. I know that some horticultural areas of the State would like to declare themselves GM free, but other areas not all that far away want to go the other way, and for equally valid reasons: their different climate and different types of crops. At this stage I do not see a problem with either of those approaches. Other issues to be debated and discussed include the commercial position of the GM-free status of New South Wales as a whole and the impact on market perceptions of introducing GMOs into presently GM-free areas. Should the New South Wales Government make representations to the Ministerial Council seeking development by the insurance industry of an appropriate insurance scheme for licensed GM dealings?

Should the Gene Technology Act create a civil liability for environmental damage? Should the Gene Technology Act create offences for intentional damage to crops, and what penalties should apply? Should the New South Wales Government provide prominent links from New South Wales Agriculture and the Environment Protection Authority web sites directly to the GTR web site, publicising trial locations and the record of GMO and GM product dealings? What other information should be made available to the public? Should the gene technology legislation be reviewed? If so, what is an appropriate review period? The committee will further investigate the potential economic costs and benefits of genetically modified food. This will include an examination of implications for individuals and committees as a whole—economic, social, cultural and environmental.

The committee will further investigate the implications of the precautionary principle for New South Wales, including perceived risks and benefits. The committee will address the issue of labelling regulations in Australia and consumer information rights. The committee will look at the rights and responsibilities of producers of genetically modified food products in relation to the community, as well as producers of non-genetically modified food products. In particular, the committee will investigate the implications of the Commonwealth gene technology regulatory framework for State government, local government and community interests. The committee will examine public reactions to, and perceptions of, genetically modified organisms. The committee will attempt to ascertain the rationale behind consumer and public sentiment regarding the acceptance or rejection of genetically modified food.

The committee will investigate the issues concerning informed choice and will research the implications of genetically modified food on international trade. This will include an examination of potential costs and benefits to New South Wales on export markets in relation to either restricting or facilitating the production of genetically modified food. Finally, the committee will examine, from a market perspective, the implications of feeding genetically modified crops to animals that are utilised for food products. The committee places the issues contained in its interim report before the House and the community and will accept further submissions and comments, and then produce a final report. I ask the House to support the report.

**The Hon. IAN COHEN** [3.21 p.m.]: I support many of the comments made by the previous speaker, who is the chair of the committee. The preparation of the interim report, perhaps better described as an issues paper dealing with genetically modified food, was certainly a significant learning experience for members of the committee, given the scope of the issue and the implications of the recommendations of the only investigation at parliamentary level or committee level in New South Wales. Genetically modified food is the subject of intense debate, not only in Australia but throughout the world at the present time, and it is timely that this committee has taken on that reference.

I am pleased to say that the Minister for Agriculture was very open to the referral of this subject to the committee on what was originally my recommendation. I was seeking open and transparent discussion about the production of genetically modified foods in Australia. A recommendation was put to, and accepted by, the Government, and the committee was established. In many ways the growing community debate has overtaken the committee somewhat. The committee now has quite an onerous task to deliver some clear positions on a profound issue confronting all people in society—not just those involved in the direct cultivation of the food, fibres and other agricultural products.

We are faced with some philosophical and practical issues. At the very top of the list, so far as I am concerned as a member of the Greens, is to look at the precautionary principle, because we are tampering with the very fundamental building blocks of nature here. Whatever the decisions, I hope they will be made on the best possible information. To that end it is appropriate to see this as an interim report, a selection of issues papers, and to regard the report as a step along the way that raises as many questions as it answers. I think it is a healthy position to be taking. For the benefit of honourable members, the Hon. Tony Kelly listed some 17 issues that have been put forward in this well-written document.

I congratulate Mr Steven Carr, Mr Robert Stefanic, Mr Stephen Fenn and Ms Annie Marshall on their hard work in support of the committee and on their assistance in compiling this interim report. The question is clear. I believe the document invites the public to further contribute to the work of this committee. There is no doubt that the question of whether primary producers in Australia should adopt gene technology is presently an unanswered policy question. I hope we can build on the information we have gained through the work of the committee, and I hope we can continue to have a sound basis for our decision-making in the not too distant future. As I understand it, a final report should be presented to Parliament very early next year.

It was decided to publish an interim report because of the scope of the investigation, and to open up the inquiry to further public input because of the nature of the subject. When considering these issues we need to look at the definition of the precautionary principle in both State and Federal legislation. We need to make an economic analysis of the potential costs and benefits for trade and the community as a whole and to consider community information, rights, reaction to genetically modified food; and, in particular, the labelling of genetically modified food—something that needs to be discussed regardless of the committee's final recommendation. Labelling is a very important issue to the Greens. We have to discuss the benefit of genetically engineered organisms-free [GEO] zones, which, as the previous speaker said, are not dissimilar to the concept of nuclear-free zones, which have had an impact in local government areas.

Also to be considered is the impact on animal products from animals fed on genetically modified crops. The debate over gene technology at least demands an analysis of all the costs and benefits of all the options open to Australian primary producers now that proponents want to introduce GEOs into Australian production systems. The Government's role should be to ensure that all new products and production processes with significant present and future social environmental and public health costs are publicly assessed using the precautionary principle, to first determine whether they should be introduced. If community-wide consultation produces a democratic decision for adoption, then a full independent assessment and a detailed registration, with enforceable conditions and effective monitoring, both before and after commercialisation, would be required.

In the policy process the Government must examine all options for sustainably meeting our food and fibre needs, and provide an integrated management framework for eliminating the negative impacts of GEOs if

they are adopted. An ecologically sustainable approach requires that we do not make irreversible changes to our natural capital, as this is our life-support system and the basis of our whole economy—there is no economy without ecology—especially for such industries as tourism. In some rural districts tourism outstrips primary production as the main source of income.

Genetic engineering and other novel forms of food production and processing technologies, such as irradiation, have no long-term history of safe use. The assumption made by the Australian and New Zealand Food Authority that all food is safe until there is evidence to show otherwise should be abandoned. We need a system more akin to the processes of safety and efficacy assurances required of new drugs. A five-year freeze on the further release of GEOs and/or the marketing of their food products is fully justified. This would allow time for the various conditions to be met.

The conditions include establishment of a strong gene technology regulator's office; enactment of national laws to enforce the decisions of the gene technology regulator; comprehensive and mandatory labelling of all foods produced using gene technology; a biosafety protocol to protect biodiversity and public health when engineered organisms are transferred internationally; an end to patents on living organisms that are leading to corporate domination of the global food supply; credible evidence from overseas, validated by independent local research, that all the risks of GE crops and foods can be avoided—such as butterfly, bee and ladybird deaths, allergies and toxic reactions—and that the technology can be used sustainably; and evidence of economic benefit from growing and exporting gene engineered products as GE foods show much stronger demand worldwide.

This issue was very much debated within the committee. The Hon. Tony Kelly mentioned that America and Canada have gone down the GE road, yet in Japan, in Europe and in many areas of South-East Asia there is strong resistance to genetically modified food products and any change in production methods involving an element of the unknown. The reality of GE food is yet to be tested. Public perception in other countries will mean that markets will be gained or lost on the status of Australia's produce. The island State of Tasmania, which has a degree of isolation, is moving toward economic advantage by adopting GE-free status.

Another condition before the marketing of GEOs or their food products is a strong, enforceable liability and insurance regime to ensure compensation for gene technology damage and a responsible industry. All Australians should be fully informed on gene technology to enable good democratic decisions, at the end of the five-year freeze, on whether we want these products. GEOs have the capacity to make such profound environmental changes that our resource base may be degraded. Yet they offer no solutions to current agricultural problems such as desertification, salination, water pollution and soil loss. Once released, GEOs cannot be recalled to the laboratory. So we have to be sure they are safe in all respects before they are released. An appropriate level of management for GEOs should be established so that irreversible damage by them is prevented.

This is of interest to the Greens in that in our policy on GMOs we have been looking at food organisms as opposed to the use of GMOs in medicine. We argue that food production should be brought closer to the safeguards and care exercised when the medical profession deals with GMO medical products so that there is less potential for escape because the processes of developing those materials is far more constrained. The general position of Australian governments, some grower groups and agribusiness that GEOs can produce economic and ecological benefits is based on assumptions, uncritical support for the gene technology industry and a commitment to global free trade in commodities. This view disregards the unsustainable social and environmental impacts of existing chemical-industrial agriculture, which the addition of GEOs will merely serve to intensify. Benefits were claimed regarding cotton production. What still has not been clearly identified is how long those benefits will last in the—

**Pursuant to resolution business interrupted.**

**GRAIN MARKETING ACT: DISALLOWANCE OF CLAUSE 4 (1) (a) OF  
THE GRAIN MARKETING REGULATION 2001**

**Debate resumed from an earlier hour.**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [3.34 p.m.]: As a result of discussions with crossbench members the following assurances and clarifications can be made. The Minister for Agriculture gave this House an assurance that he will facilitate any request from the Grains Board administrator for an Australian

Securities and Investments Commission [ASIC] inquiry. ASIC, of its own volition, does not have the power to step in and investigate a State statutory entity, nor can it do so at the request of an independent party such as the administrator of the Grains Board. The only way that ASIC can become involved is as an agent of a State government entity, for example, the Minister for Agriculture on request of the entity. The administrator has not, since 1 July when the Federal Corporations Law changed, made any approach to ASIC. In 2001 under the old law he did seek an approval from ASIC that was granted. This is contrary to the report in the *Australian* on 10 August 2001.

**The Hon. Duncan Gay:** Are you going to table that?

**The Hon. IAN MACDONALD:** I will hand it around. It is now on the record.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [3.36 p.m.], in reply: It is interesting what a difference a day makes. First there was not a problem in the world; the Government was doing absolutely the right thing. And now at the last moment the Government has come up with an assurance that the present Minister for Agriculture will refer any matter that the administrator wants referred. It is only a stopgap because we have caught the Government out on this. This guarantee that the Parliamentary Secretary gave at the last moment in the upper House was not one that the Minister freely gave in the other place—an indication that the Government really did not want to give it. The assurance applies only to the present Minister for Agriculture. It is not binding on following Ministers for Agriculture. The Government could change its Minister for Agriculture tomorrow—

**The Hon. Jennifer Gardiner:** As it should.

**The Hon. DUNCAN GAY:** Exactly. Then the undertaking would not be binding. So the reality is that the Government has not fixed the problem. I agree that the Government has acted properly in recognising what had to be done by the Parliamentary Counsel. It needed to react in the way that it did. The Special Minister of State, in speaking to the motion, read out a list of options available to the Government. It chose the least suitable. If the parliamentary Public Accounts Committee—a bipartisan committee chaired by one of the Government's own—produced a report that was critical of the Minister, the department, the director-general and Parliamentary Counsel, amongst others, and gave a list of people that the Government could use to fill this role and one of those people was the Director-General of the Department of Fair Trading, why would the Government not have taken that on board? Why would it not remove perceptions of concern by appointing that person?

The Government had the choice of appointing the Auditor-General or the Director-General of the Department of Fair Trading, its own recommendation, yet it chose to appoint the Minister. That was an improper position, notwithstanding that he is no better qualified than anyone else. The Minister's curriculum vitae does not mention any degree in economics or an accounting background. To my knowledge the Minister is a former policeman. There is nothing wrong with being a policeman, there are a lot of terrific former policemen in this Parliament, but they would not pretend to be experts in this area. That is why the Government should have taken the advice of the Parliamentary Counsel. The Special Minister of State said that one option the Government could have taken was to appoint the Director-General of the Department of Fair Trading. That is what I said. The Opposition believes that the Government, for the most part, has acted properly. It has acted improperly, however, by allowing Caesar to judge Caesar. The Government, in an interesting briefing paper provided to members of the crossbench, stated:

This is a highly technical and complex matter of a purely minor administrative nature.

That is an oxymoron; it is a completely ridiculous statement. The third-last paragraph of that briefing paper states:

The intention is that the Minister, if requested, can approach the ASIC administratively.

The Government's briefing paper indicates that the Minister could, not must, approach ASIC. The most telling point—that which the Government used the most to not support the Opposition's motion—was its statement that the Opposition, for political purposes, sheets the blame for the board's failure to the Minister for Agriculture and, therefore, asserts that he has put himself in charge of investigating his own culpability. That is clearly not the case.

**The Hon. Tony Kelly:** That's right.

**The Hon. DUNCAN GAY:** That is not what the Public Accounts Committee said and it is not what the independent authority, which comprises all parties of this House and is chaired by a Government member, said. The committee said that there is a responsibility for the director-general, the department, the board and the Minister. Why could the Minister not be sensible? The first part of the regulation is sensible and necessary. The Minister should have continued along that line. When alerted to that provision I could have said that it may have been an accident, that the Government may have invoked it inadvertently. The Opposition could have given the Government the benefit of the doubt and said that the Minister's proposal was an accident. Yet, the Government has not fallen over; it has fought it all the way.

When the Opposition caught out the Government and exposed its humbug and hypocrisy did the Government come back to the House and say that it was sorry, that it would take its own advice and appoint the Director-General of the Department of Fair Trading or that it would be even more adventurous and sensible, open and accountable, and appoint the Auditor-General to that position? No, it was decided to leave the Minister, who is seen to be culpable, in that position. In the dying moments, when caught out, the Government came back with an assurance that it would facilitate any request from the Minister.

**The Hon. Rick Colless:** But it is on plain paper.

**The Hon. DUNCAN GAY:** Yes, the assurance is on plain paper, it is unsigned, and it was issued at the last moment. So the Government has been found out and it has had to roll over. The Government has had to do a flip-flop. But what did it amount to? Zilch! It is a worthless piece of paper, because the Government has left in place a silly regulation. This undertaking is meaningless, because tomorrow the Minister could be gone. As the Hon. Jennifer Gardiner said earlier, the best thing for agriculture in New South Wales is for the Minister to go tomorrow. The Opposition hopes that the crossbenchers will support this motion. The Government should be given the right to bring back a regulation and appoint someone of its choice, but that person should not be the Minister. The Opposition believes that the regulation is proper, and we accept the Minister's argument that the regulation had to be put in place. However, the Opposition does not accept that the person who should possess that right has to be the Minister. The Government has conceded that another person could have been appointed. I would have thought that after suffering a 3 per cent loss in regional New South Wales at last weekend's Federal election the Country Labor mob would have learnt a lesson.

**The Hon. Ian Macdonald:** How much?

**The Hon. DUNCAN GAY:** It was 0.8 per cent across the country, but it was 3 per cent in regional New South Wales. The Hon. Tony Kelly, the Hon. Ian Macdonald and their Country Labor mates have been responsible for the biggest Labor loss in this nation. They are solely responsible, and they, together with the Minister, have to wear that. Unless they learn about accountability— *[Time expired.]*

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

**The House divided.**

#### Ayes, 15

Dr Chesterfield-Evans	Mr Harwin	Mr Samios
Mr Colless	Mr M. I. Jones	
Mrs Forsythe	Mr Oldfield	
Mr Gallacher	Mr Pearce	<i>Tellers,</i>
Miss Gardiner	Dr Pezzutti	Mr Jobling
Mr Gay	Mr Ryan	Mr Moppett

#### Noes, 23

Mr Breen	Mr R. S. L. Jones	Mrs Sham-Ho
Ms Burnswoods	Mr Kelly	Ms Tebbutt
Mr Cohen	Mr Macdonald	Mr Tingle
Mr Corbett	Mrs Nile	Mr Tsang
Mr Costa	Reverend Nile	Mr West
Mr Dyer	Mr Obeid	<i>Tellers,</i>
Mr Egan	Ms Rhiannon	Ms Fazio
Mr Hatzistergos	Ms Saffin	Mr Primrose



**Pair**

Mr Lynn

Mr Della Bosca

**Question resolved in the negative.****Motion negatived.****CRIMES AMENDMENT (SEXUAL SERVITUDE) BILL****Bill received and read a first time.****Motion by the Hon. Ian Macdonald agreed to:**

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

**CEMETERIES LEGISLATION AMENDMENT (UNUSED BURIAL RIGHTS) BILL****Second Reading****The Hon. IAN MACDONALD** (Parliamentary Secretary) [3.55 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.**

Lands were set aside for cemeteries in New South Wales under four broad forms of management: Crown land cemeteries under the administration of my portfolio as Minister for Land and Water Conservation, Crown Cemeteries under the administration of local government councils, church cemeteries and private cemeteries.

Cemeteries on reserved Crown or dedicated lands are managed by trusts appointed by me as Minister for Land and Water Conservation under the Crown Lands Act, 1989.

Many other cemeteries across New South Wales also on reserved Crown or dedicated lands are under the administration of my colleague the Minister for Local Government as the management of these cemeteries has been vested in the respective local council as trustee.

Church cemeteries are located within Church grounds and are under the control of various religious denominations.

They are generally of limited capacity and are therefore of little consequence in the context of the needs of metropolitan Sydney and the Newcastle populations.

There are seven large private cemeteries in Sydney, Newcastle and Wollongong.

Four provide a full range of cemetery services while three operate exclusively as lawn cemeteries.

Other private cemeteries comprise family burial grounds and isolated graves on freehold properties across the State.

It is of significant importance that I now bring this Bill before the Parliament.

Burial capacity in Crown Cemeteries in Sydney and Newcastle that come under my control as Minister for Land and Water Conservation is reaching the critical stage.

The pressures of an ever increasing population and the lack of available, suitable Crown land to service the metropolitan populations will mean that some existing Crown Cemeteries, such as the Rookwood Necropolis will be generally exhausted in 20 to 30 years.

Another consideration that cemetery trusts must now take into account is the Threatened Species Conservation Act.

The importance of this Act is undeniable, however lands that were set aside for further burial sites must now satisfy the provisions of this legislation.

As you may appreciate, many cemeteries across the state have native vegetation in near pristine condition that provides habitat for native fauna.

In this regard the Rookwood Anglican Cemetery has advised that most of the remaining land available to that trust for burials will not be able to be cleared.

This means that the estimated burial capacity of that trusts reserves has been reduced by an estimated 13 years with none available after 2017.

Several years ago it became apparent that pressures being imposed on the medium to longer term of these Crown cemeteries had to be addressed.

As a consequence, a discussion paper, "Revocation and Reallocation of Rights of Burial to Unused Gravesites", April, 1998, was placed on public exhibition for two months from May, 1998, for consideration and comment.

Copies were also forwarded to key interest groups (all MPS, funeral industry, relevant government authorities, and key interest groups including for example National Trust and the Public Trustee).

While cemetery trusts have the legislative power to buy back unwanted rights of burial from owners, they do not have the legislative power to revoke and reallocate rights of burial where the owner is deceased and there are no heirs or assignees to claim the right of burial.

As you might expect, there was strong support from the respondents for the revocation and reallocation of unused gravesites which were granted more than 50 years ago.

Issues which attracted most attention and considered to be most contentious were:

- Methodology to be used in an attempt to locate owners of unused grave plots sold more than 50 years ago;
- Level of compensation to be paid to owners should a plot be revoked; and
- Whether plots can be resold on a 'pre-need' basis.

There was strong support for the revocation and reallocation of unused grave sites which were granted more than 50 years ago.

Earlier this year the Returned Soldiers League and Legacy argued that the period should extend further to take account of the interests of the families of all war veterans. The period has been extended to 60 years to accommodate these needs.

The representations resulted in the development of the methodology for inclusion in the subordinate legislation as well as the provision of limited compensation.

It was decided that prior to revocation it was up to the cemetery trust and the owner of a burial right to enter private negotiations for a voluntary buy back of the right.

It is only after much careful and considered deliberation that this Bill—Cemeteries Legislation Amendment (Unused Burial Rights) Bill 2001—sits before us here today.

Before I detail the content of the Bill I would like to highlight the most significant features of the proposal bearing in mind the facts that I have already outlined in relation to the undeniable pressures on available burial land within the Crown cemeteries estate, and they are:

That this proposal will provide for increased burial capacity in the short to medium term for Crown cemeteries within the Sydney/Newcastle areas that come under my administration.

That this Bill seeks the amendment of relevant legislation to authorise trusts responsible for these Crown cemeteries to revoke exclusive rights of burial for gravesites that have never been used and were generated more than 60 years ago.

The provision of uniform and comprehensive search requirements across all relevant cemeteries by the respective trusts to give the same opportunity for all 'rightful owners' to advise of their continued interest in the sites.

To provide a uniform and adequate level of compensation across all relevant cemeteries should a claim be made by an 'owner' once the exclusive burial rights of a site have been revoked.

There are up to 30,000 unused gravesites in Sydney Crown cemeteries that were sold prior to use more than 60 years ago.

At Sandgate Cemetery (Newcastle) this figure is in excess of 2,000. Over the next few years these figures are anticipated to increase.

As an example, the Botany Cemetery advised that in 1993 there were 3,500 unused sites pre-sold more than 50 years ago.

This figure is now 4,500.

At Rookwood, the Joint Committee of Necropolis Trustees' statistics show cremations are 29% of internments in 1941 with a steady increase until 1963 when they were approximately 50% compared to burials.

This trend may indicate an increase in the number of graves reserved and not used as cremation was becoming more popular.

Collectively the cemetery trusts estimate that the revocation and reallocation of unused burial rights could generally extend the operation life of the existing Crown cemeteries by approximately 5-10 years by increasing stocks of grave sites by 15-20%.

In more detail then, the purpose of this Bill is to make amendments to the *Necropolis Act 1901* so as to allow the body of trustees for a cemetery at Rookwood to revoke burial rights.

The trustees' power will operate in relation to burial rights granted by a trust that have never been used and remain unused for more than 60 years.

The Bill also provides for the compensation of holders of burial rights revoked by the trustees in those circumstances.

The Bill also amends the *Crown Lands (General Reserves) By-law* so as to allow the reserve trust for any other public cemetery to revoke burial rights it has granted if they remain unused for more than 60 years, and to provide for the compensation of holders of burial rights revoked by the trust in those circumstances.

The Bill also makes minor, consequential and ancillary amendments to the *Crown Lands Act 1989* and the *Land Acquisition (Just Terms Compensation Act) 1991*.

## NEW PROCEDURES

The Bill amends the *Crown Lands (General Reserves) By-law* so that a cemetery trust at Rookwood or other cemeteries regulated by the By-law are able to ascertain whether there are lawful claimants to the burial right before revoking that right.

The process for calling for rightful owners to come forward to claim unused burial rights will be set out in the subordinate legislation.

It will reflect a comprehensive process and will involve two rounds of advertising in newspapers and at the cemetery itself over a period of about 8 months.

The cemetery trust must undertake the following actions before revocation action can take place.

First, a notice is to be sent to the address as shown in the Register of Burial places to the recorded owner by registered mail.

Twenty eight days later, notification is posted at the cemetery and in newspapers.

This notification will include posting of notices at the cemetery office, and all entrances to the cemetery, and at the gravesite.

It will advise that the exclusive unused burial rights granted more than 60 years ago will be revoked and resold unless the current owner comes forward.

Notices will also be advertised in a local and in national newspaper calling for the rightful owner to contact the cemetery trust.

After six months has elapsed, follow up notices will reappear in those newspapers advising that the burial rights will be revoked after 28 days and resold unless an owner advises the cemetery trust of their claim for a particular site.

If no claim is made as to ownership of the site, the cemetery trust may then revoke the burial right and this will be formalised in the Government Gazette.

This allows the trust to then resell the burial plot to another person.

Should a rightful owner come forward after the revocation period, the compensation provisions will apply to that claimant.

The period during which a post revocation claim can be made will be limited to six years from the date of the revocation to reflect the normal limitation periods for civil claims.

The period is considered to be more than adequate time to allow rightful owners of the interest to advise their continued interest in the burial right.

The process cannot be commenced until the 60 years after the right was first granted where that right remains unused.

The Bill provides for similar procedures to be made generally in relation to by-laws that can be made under the *Crown Lands Act 1989*.

## COMPENSATION

As stated, the Bill provides a mechanism for compensating the owner of a burial right should that right be revoked by a cemetery trust.

A party who was formerly entitled to the benefit of the now revoked burial rights may claim compensation from the appropriate trust that has revoked that right. Compensation may take either one of two forms.

- Firstly, either the claimant is paid a monetary compensation equivalent to 50% of the fee of a replacement site at today's rates; or
- secondly, the claimant may be offered the provision of a replacement site.

The form of compensation offered to any particular claimant will be at the discretion of each individual cemetery trust, as the opportunity to offer a claimant a replacement site may in fact be limited by the availability of land and may vary from trust area to trust area.

This approach will provide more flexibility for trusts in planning for the future of their cemeteries.

In 1900 exclusive rights of burial were purchased for an equivalent of approximately \$1.70 and in the 1970s and early 1980s for around \$105.

Now prices can range to over \$2,000.

However, it is only in recent times that the figure has included a perpetual care component, opening of graves sold either prior to planned use or headstone contribution.

Also, prices differ from cemetery to cemetery for a variety of reasons.

Given these facts, reimbursement at an amount of 50% instead of 100% of the value is considered reasonable and equitable.

In addition it is necessary to recognise that there are considerable advertising and other administrative costs associated with the search by a trust for the rightful claimant before revocation of the right can take place.

Concerns have also been raised that burial plots should not be treated as 'real estate' whereby unscrupulous heirs or assignees may come forward after a plot has been resold to claim current value.

Hence the decision to limit the level of compensation at 50% of the market value.

In terms of the legal nature of a burial right, the general position in Australia is that a right of burial is not an absolute right of property, but a privilege or licence to be enjoyed so long as the place continues to be used as burial ground and legally revocable whenever the public necessity requires.

It is a right of limited use for the purpose of internment, which gives no title to the land.

There is no right of appeal from the compensation decision made by a trust and no right for compensation under the *Land Acquisition (Just Terms Compensation) Act 1991* as the provision for compensation under the Bill is adequate in the circumstances.

## **POLICY CONTEXT**

As I mentioned in opening, the need to provide a power to revoke unused burial rights is a practical response to the increasing pressure for burial land at cemeteries in NSW administered by the Crown, mainly in the Sydney and Newcastle area.

I reiterate that it is estimated that all available capacity will be exhausted within 20-30 years.

In the case of individual cemetery trusts' area, the time frame is much shorter.

For some, available space is currently at a premium. It is therefore crucial that the Government provide a practical short to medium term solution to the pressures for available cemetery land.

This Bill gives cemetery trusts the power to reacquire through revocation, unused burial sites and reallocate them as needed but only in relation to burial rights that remain unused for 60 years.

This long period was chosen to take account of the rights of the families of returned soldiers.

It is estimated that there are up to 30,000 unused burial sites on the affected lands.

The Bill also recognises the rights of owners of burial rights and provides a methodology for adequately compensating them should they come forward after revocation has occurred.

It is expected that this Bill will have the effect of extending the efficient use of individual trusts' cemetery land by 5-10 years on average.

The by-law will provide a comprehensive process for advertising so that the rightful owners will be able to claim their inheritance.

At the same time, by providing an end date to such claims through that process, the trusts are able to gauge with certainty the available space within their cemetery and plan for future operations.

## **SUMMARY**

Changing demographics in New South Wales means that land at existing cemeteries is at a premium.

The Government must assist cemetery trusts to operate viable cemeteries for local communities.

By enabling trusts to free up abandoned and unused burial sites, the Government can support the trusts in provision of these services to meet community needs.

Trusts will have greater certainty as to the availability of burial plots for the medium term and this in turn will ensure that trust records are accurate for accounting and financial purposes.

The new powers will enable trusts to implement strategic plans for the future of their cemeteries and provide adequate compensation for those that may be affected by the revocation.

I commend the Bill to the House.

**The Hon. RICK COLLESS** [3.55 p.m.]: I lead for the Coalition on the Cemeteries Legislation Amendment (Unused Burial Rights) Bill, which essentially amends the Necropolis Act 1901 to allow the body of trustees for a cemetery at Rookwood to revoke the burial rights it has granted if they remain unused for more than 60 years, and to provide for the compensation of holders of burial rights revoked by the trustees in those circumstances. It seeks also to amend the Crown Lands (General Reserves) By-law 2001 to allow the reserve trust for any other public cemetery to revoke burial rights it has granted if they remain unused for more than 60 years, and to provide for the compensation of holders of burial rights revoked by the trust in those circumstances. The bill also makes minor and consequential changes to the Land Acquisition (Just Terms Compensation) Act 1991 and the Crown Lands Act 1989. There are many unused burial sites in cemeteries that were paid for by people more than 60 years ago which, for various reasons, have never been used.

This bill attempts to release these burial sites so they can become available for use. I note with concern some comments in the Minister's second reading speech that indicated that native vegetation issues have reduced the availability of burial sites within cemeteries. It is an indictment that native vegetation should take precedence over the rights of humans, particularly relatives who have lost a loved one. It was inappropriate of the Minister to introduce native vegetation matters in debate on a topic as personal as cemeteries. Cemetery trusts have the legislative power to buy back the unwanted rights of burial sites from owners but they do not have the power to reallocate or revoke burial rights where the owner is deceased and no heirs or successors can be located. This bill attempts to remedy that situation.

There are four significant features of the bill. First, the bill will create an increased burial capacity in the short term to medium term for cemeteries in the Sydney and Newcastle areas. Honourable members would be aware that as the city of Sydney grows and existing cemeteries become full, there will be a need to maximise the availability of burial sites. The bill also allows for the revocation of exclusive burial rights by cemetery trusts when those rights were granted more than 60 years ago. In many cases the person with the right to a site has passed on and the right to use that site falls to that person's heirs and successors, who may be unaware of the burial right. This bill attempts to provide a uniform and comprehensive search requirement across all cemeteries to ensure that the rightful owners of burial sites are able to express their interest in those sites and to decide whether they wish to utilise or forgo their rights. The bill allows for the payment of compensation if an exclusive burial right is revoked and the rightful owner makes a claim on the cemetery trust. However, that compensation is to apply only if the rightful owner comes forward after the revocation period.

There are about 30,000 burial sites in Sydney that were sold prior to use more than 60 years ago and may be eligible for this program. It is estimated that this legislation could increase the life of some cemeteries by five, 10 or 15 years. That figure will probably increase as time passes as cremations are becoming more common and have accounted for about 50 per cent of interments since 1963. This compares with some 30 per cent in the early 1940s. This program will release many sites that may never be claimed by their rightful owners.

The Opposition is concerned about some aspects of the bill, particularly the value of contingent liabilities for some cemetery trusts. For example, Sandgate Cemetery in Newcastle has some 2,000 burial sites that are more than 60 years old and that are worth \$2,000 per site at today's market prices. That represents a contingent liability of \$4 million. While we believe that the owners of such sites should be compensated for their full market value, we understand that it is unacceptable and unreasonable to expect cemetery trusts to show the full cost of that contingent liability in their financial records. The Opposition intends to move an amendment in that regard in Committee. The Opposition does not oppose this bill, which we believe offers a practical, workable solution to a problem affecting the cemetery industry in New South Wales as a whole and in Sydney and Newcastle in particular. We have some concerns about the legislation, but we will address them in Committee.

**Reverend the Hon. FRED NILE** [4.03 p.m.]: The Christian Democratic Party supports the Cemeteries Legislation Amendment (Unused Burial Rights) Bill. It is clear that this legislation has to do not with the persons who are buried in cemeteries but with unused burial sites. The legislation seeks to amend the relevant legislation, the Necropolis Act and the Crown Lands Acts, to authorise Crown cemeteries to revoke exclusive rights of burial granted more than 60 years ago that have never been exercised. There are apparently up to 30,000 unused grave sites in Sydney's Crown cemeteries that were sold prior to use more than 60 years ago. At Sandgate Cemetery in Newcastle this figure is in excess of 2,000, and is expected to increase in the next few years. For example, Botany Cemetery advised that in 1993 there were 3,500 unused sites that had been sold more than 50 years ago. This figure is now 4,500.

These burial sites have not been used perhaps because deceased persons gave instructions in their wills to be cremated rather than buried. Cremations accounted for 29 per cent of all interments in 1941, and that

figure increased steadily until 1963 when the figure was 50 per cent. This trend equates to the increasing number of graves reserved and not used with the increasing popularity of cremation. That deduction is probably correct. The legislation is strongly supported by the funeral industry, particularly the Crown cemetery trusts that wish to see the revocation and resale of unused burial sites granted more than 60 years ago. However, in November I received a letter from Alan Brown, Chief Executive Officer of the Rookwood Independent Cemetery, in which he states:

The Independent Cemetery Trust welcomes the approval of legislation changes to allow cemetery trusts to revoke exclusive burial rights where those rights have never been used and were granted at least 60 years ago.

However we disagree with the fact that the public may be able to claim compensation of up to 50% of the value of a replacement site at today's rates. Many of these graves would have been purchased for the equivalent value of \$2.00 at today's price ...

The Independent Trust currently purchase burial rights back from the public at a price determined by Trust management with a ceiling set at no greater than \$200.00, and to date this has worked effectively.

Mr Brown said that since the intention to introduce this legislation was announced his office:

... has been besieged with telephone calls from ancestors who purchased gravesites 60 - 100 years ago.

To validate their lineage/ownership of gravesites and the amount of funds originally allocated for the perpetual care of the cemetery will be a huge financial burden on all Trusts affected by this legislation together with the additional cost of advertising the revocations and administering the Act.

We must recognise that trusts will resell burial sites at the current commercial rates—they will sell them not for \$2 or even for \$200 but for thousands of dollars. I suppose that prices will vary according to the location of the site and so on. I understand that the RSL lobbied the Government to increase the time span from 50 years, as originally proposed, to 60 years, and we support that change. It is hoped that this legislation will extend the life of cemeteries by five to 10 years. We agree with the Hon. Rick Colless, who said that it seems strange that owing to environmental concerns the Anglican cemetery at Rookwood has lost a great area of land that it had set aside for burials. I believe the burial of human beings should take precedence over any concerns about species of fauna that may have moved into the cemetery area.

For that reason, I would certainly support legislation that exempted cemeteries from environment legislation. That is the only way we can operate. Obviously, grass, bushes and trees will grow over unused areas of cemeteries and they will then become a protected environment. We would support legislation that approved cemetery sites set aside with clear boundaries being exempted from environment legislation. We support the bill and agree with the Opposition's concerns that so much land apparently now cannot be used because of the provisions of the threatened species legislation.

**The Hon. RICHARD JONES** [4.10 p.m.]: The burial capacity in Crown cemeteries in Sydney and Newcastle is said to be reaching a critical stage due to population increases, lack of available and suitable Crown land, and restrictions imposed by the Threatened Species Conservation Act. Rookwood Necropolis, for example, is expected to be generally exhausted in 20 to 30 years and most of the land available to the trust operating the Rookwood Anglican Cemetery cannot be cleared. While cemetery trusts can buy back unwanted burial rights, they have no power to revoke and reallocate unused plots. Therefore, this bill authorises Crown cemeteries to revoke and resell some 30,000 unused exclusive rights of burial that were granted over 60 years ago in order to extend the life of cemeteries by five to 10 years.

While Crown cemetery trusts must compensate the holders of burial rights for any revocation by either providing them with an alternative burial place or an amount equal to half the fee payable for the granting of exclusive rights of burial, it is not clear whether the holder of the right can choose to retain it if they come forward prior to revocation. Those who come forward after revocation of a burial right could also unfairly benefit from being provided with an alternative burial place and transferring or trading that place soon afterwards. The concept of reallocating rights of burial to unused grave sites is strongly supported by the National Trust.

The trust not only made a submission in support of the reallocation of rights of burial to unused grave sites via a discussion paper in April 1998, but more recent inquiries with the trust's cemeteries adviser, Dr George Gibbins, revealed that the changes proposed in the bill are not really any different from those proposed in that discussion paper, and that the only concern would be the possibility of inappropriate monuments being established in old parts of cemeteries and the resultant adverse effects on heritage values. However, the bill allows managers of cemeteries to include conditions on the resold burial rights to guard against that. Dr Gibbins indicated also that the trust would like to see the bill passed on conservation grounds as cemeteries need to have an income if they are to effectively maintain the conservation and heritage values of their lands.

The bill is strongly supported also by the Catholic Cemeteries Board, so much so that the board believes the bill should extend to cemeteries under the Local Government Act and privately owned cemeteries. However, the board is of the opinion also that the bill should limit the obligations of the cemetery trusts to bring to account the contingent liability to pay compensation on the grounds that this would render some cemeteries almost insolvent. The board has suggested also that specific provision be made in the bill for no right of appeal from the compensation made by a trust in order to prevent the prospect of endless minor pieces of litigation, and has registered its opposition to any suggestion that reserve trusts pay 100 per cent of the current market value of the rights of burial as compensation.

The board has opposed reserve trusts paying 100 per cent compensation on the grounds that they place 40 per cent of the sale of proceeds of burial rights in a Perpetual Care Fund for the physical care of cemeteries in perpetuity, and 100 per cent compensation would leave no funds to pay for advertising, administration and holding costs incurred by cemeteries, and the ongoing care and maintenance of cemeteries, which would result in a cash loss to cemeteries. I understand that the Opposition will move amendments in Committee that limit the obligations of the cemetery trusts to bring to account the contingent liability to pay compensation—which I support—and to ensure that reserve trusts must pay 100 per cent of the current market value of the rights of burial by way of compensation, which I am unable to support.

The Government will move amendments that will allow for a Minister's right of review of a trust's decision about the type of compensation offered—which could then be appealed to a court if the correct process is not followed—and will limit the obligations of the cemetery trusts to bring to account the contingent liability to pay compensation. None of these amendments addresses recognising the rights of owners to retain burial rights should they come forward to claim them prior to revocation and ensuring that those who come forward after revocation of a burial right do not unfairly benefit through transferring or trading their alternative burial places soon after taking ownership of them. Therefore, I will move amendments in Committee that ensure that the holders of burial rights can retain those rights to a particular cemetery if they come forward during the advertising period prior to revocation and any replacement plot cannot be transferred or traded for five years. I understand that the Government will support my amendments, and I urge all honourable members to do so.

**Ms LEE RHIANNON** [4.15 p.m.]: The Greens believe that this bill is a good and practical solution to a problem confronting our society. It is an increasing problem because many people or their families have stipulated their wish to be buried. When I was reading this legislation I wondered what will happen in this place 20 or 30 years from now when we really have run out of land. However, for the moment we believe that the Government has come up with a practical way to extend the life of our cemeteries. There is a need to provide increased burial capacity in Crown cemeteries. We understand at the present time that there are about 30,000 unused grave sites. Therefore, mobilising this land in a way that recognises people's rights will give us some breathing space, so to speak.

I believe that the cemetery trusts estimate that this bill will extend the operating life of existing Crown cemeteries by up to 10 years. Therefore, it is certainly worth getting organised to achieve that. We believe this proposal is a fair system. If it eventuates as we read, it can be seen that every effort will be made to find those who own these unused plots. In relation to the six-month period, we support the proposal that if people choose not to take an alternative plot, they can take up the other option of receiving 50 per cent of the value of that plot. We believe it is sensible and reasonable to pay 50 per cent of the value because the trust will have been involved in quite a deal of expense in trying to find the owners of the plots.

Some people have been in touch with the Greens and have expressed concern about this legislation. We heard of one very sad case in Wollongong where a plot had been sold, but I understand that it involved a private cemetery and that it could not happen at cemeteries on Crown land. The case involved a couple who had two plots together. The husband died at quite a young age and was buried. When his wife died in her late nineties it was discovered that the remaining plot had been sold and she ended up being buried miles from her husband, which caused much angst to the family. However, through the provisions of this bill that sort of problem will not be encountered. I understand also that family crypts will not be scooped up in this legislation. The Greens thoroughly checked the concerns that were raised and determined that this is a good and practical solution to the problems cemeteries face. We are pleased to support it.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [4.18 p.m.]: This seems to be a reasonably practical bill with reasonable compensation for people who do not realise that their burial plots will be taken over. For example, people may not see the advertisements and they may, at a much later date, ask about their plots. In this instance, they will be given another plot or they will be paid what seems to be reasonable compensation, given that the value of the plot has changed dramatically with inflation and time.

Compared to cremation, the percentage of people being buried is falling. Obviously, the plots of those cremated and not buried will continue to be available. I understand that Rookwood has 10,000 plots and that New South Wales as a whole has a total of 30,000 plots. At \$2,000 to \$4,000 each, that is \$60 million to \$120 million. We would like an assurance from the Government that the money will go to the trusts to be used for the perpetual care of the cemeteries. In the past trusts have not had sufficient money to maintain the cemeteries in perpetuity. When a cemetery is full it should continue to be maintained as a place for reflection by the relatives of those who are in the cemetery, as an historical place or a place to write eulogies—country churchyards are places of inspiration.

Cemeteries should not be allowed to go to rack and ruin—the headstones decayed or weathered away and the remaining few that are recognisable stuck on a wall—then turned into a park or sold to a developer. If cemeteries are to be maintained as places to remember our dead and reflect on the mortality of the human race, rather than be sold and developed by successive governments, the money generated as a result of this legislation must go into non-profit trusts responsible for maintaining our cemeteries in perpetuity. In supporting the bill I would like a reassurance from the Government in that regard. I trust that the Minister will confirm that in his reply.

**The Hon. DOUG MOPPETT** [4.22 p.m.]: The bill is not controversial, but it is worth reflecting on the fact that in 1994 the predecessor of the Department of Land and Water Conservation—the Department of Conservation and Land Management [CALM]—prepared similar legislation. I was part of a backbench committee that followed the development of the legislation. We understood that negotiations with the then Opposition had been extensive and that the matter was advanced in a bipartisan way because of the sensitivity of various people to the right of burial and the need to access places in cemeteries to put the remains of their loved ones. It is sad to note that that bipartisanship broke down. We were on the eve of the 1995 election, and the legislation had to be shelved because the Labor Party was not prepared to support it. The Labor Party buckled to groups in the community that had expressed fears about the ramifications of the legislation for people who held those rights very dear.

It is also interesting to note that at the time it was foreshadowed that the matter was of such urgency that sites would be unavailable at the turn of the century. It is interesting to see the modification of those estimates with the introduction of this bill. However, no-one would be silly enough to suggest that the matter could be deferred again. We must be practical and realise that although there have been changes in the social mores and a great swing in metropolitan areas in particular in favour of cremation of deceased people, burial remains very common in country areas where land is available. This problem does not confront local communities. But in metropolitan areas it is certainly very much a sea of changing expectations. Yet the need remains to maintain cemeteries and provide grave sites when, from time to time, they are demanded.

We must be open minded. I hope, as do many others, that cemeteries will be maintained for as far into future as possible. But at the same time we must recognise that some of the cemeteries that were established very early in the history of this State have already been redeveloped. It was only recently that someone pointed out to me that the Central Railway Station site was one of the early burial sites in the Sydney region. The development of that area led to the subsequent development of the Rookwood site and the invocation of the rather quaint term "necropolis". I am unaware of that term ever having been applied anywhere else. Many honourable members are aware of the extensive railway arrangements at the chapel at Central Railway Station and Rookwood, one of which was shifted to Canberra and is now an Anglican parish church.

For as long as cemeteries are available, they should be maintained. Reference has been made to their historical nature. While I was a councillor in Coonamble shire we had to deal with the redevelopment of the original cemetery in Coonamble. We were more than happy to comply with the requirements given to us by the predecessor of the Department of Land and Water Conservation, CALM, for the storage of various edifices, headstones and other items associated with the cemetery. We made extensive efforts to contact relatives of those who had been buried there, which we followed up meticulously. I am aware that, following developments in 1994 and 1995, quite a number of local councils contacted people in an extensive sweep to establish current names. I was contacted with respect to two vacant plots in South Head Cemetery, which are adjacent to those in which my grandfather and grandmother were buried.

The contact was most courteous. The council assured me at the time that, having been guaranteed the continuing interest of the family, our rights to those plots would be respected by the council within its present regime. I understand that it will have to be reviewed. Demands and pressures bring about changing attitudes from time to time. The important thing is the manner in which people who have these rights are dealt with. Their



rights must be respected as far as possible. I also know that in some cases the descendants of people who have reserved these plots will be untraceable. They may not even exist. Provided due diligence is exercised trying to locate them, we must recognise that it is quite proper for the authorities to exercise their rights to reassign those plots and to ensure that they are used.

There is still that demand and people may like to bury their relatives close to where they have lived or where they are accessible to their successors—family and relatives—who may wish to visit the site in the future. Essentially, the wishes of the deceased are paramount. If the deceased wanted to be interred next to a relative or friend, I think as far as possible we would still like that to happen. Where there is no longer any relevance to any living person, we need to have machinery by which those plots are revoked, if you want to use that word, and made available to those who have a need for them.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.30 p.m.], in reply: I thank honourable members for their contributions to the debate. The passing of the Cemeteries Legislation Amendment Bill will allow the Government to assist cemeteries to alleviate, at least in the medium term, the increasing pressure on burial sites at Rookwood and other Crown cemeteries in New South Wales. It is estimated that, unless action is taken now, burial sites in those cemeteries will be exhausted within approximately 20 years. Cemeteries on reserved Crown or dedicated lands are managed by trusts appointed by the Minister for Land and Water Conservation under the Crown Lands Act 1989. Many other cemeteries throughout New South Wales, also on reserved Crown or dedicated lands, are under the administration of the Minister for Local Government as the management of those cemeteries has been vested in the respective local council trustee.

As I said, burial capacity in Crown cemeteries in Sydney and Newcastle under the control of the Minister for Land and Water Conservation is reaching a critical stage. This bill has the potential to extend the life of these Crown cemeteries in the medium term. Lands that were set aside for further burial sites must now satisfy the provisions of this legislation. The rights of any rightful owners of unused burial sites and the cemetery trusts are provided for under the Act. A thorough search for the rightful owners must be undertaken prior to revocation. This involves a comprehensive advertising process, if this information is not evident from the search of trust records.

During the advertising process, and indeed at any time prior to revocation of the burial right, the true owner may come forward and assert entitlement to that burial right. The trust cannot, in that case, compulsorily sell the burial site. If the owner cannot be located during the advertising process and the right is revoked subsequently, the trust may proceed to sell the right to another, as needed. In the unlikely circumstance that the true owner comes forward after revocation, the Act protects the rights of the former owner by making provision for compensation within the stipulated number of years. After expiry of the time prescribed, the trust will no longer be liable to provide any compensation.

The Government acknowledges the valuable contribution of my good friend the Hon. Richard Jones in moving amendments concerning the rights of the beneficial owners and providing trusts with certainty so they may plan the future of their cemeteries. The Government is unable to support the Coalition's proposal of 100 per cent compensation. The amount of 50 per cent compensation, as provided in the legislation, is considered adequate in light of the past maintenance costs and the substantial advertising costs borne solely by the trusts up until that time. Some trusts have represented to the Government that compensation of less than 50 per cent should be paid. It is the Government's view, however, that 50 per cent is fair and equitable to both the former holder and to the trust.

The Government opposes the Coalition's proposal to allow for contingent liabilities to be removed from a trust's accounting records, as this would be anomalous with provisions in the Crown Lands Act relating to other trusts which manage Crown land. This would set an unsuitable precedent whereby a trust would not be required to make full disclosure and account for contingent liabilities arising from the revocation of unused burial rights. This would result in a trust potentially engaging in unacceptable creative accounting and could result in calls to the Government to bail out some trusts because they did not make adequate provision for those contingent liabilities. The amendment would create an entirely unacceptable situation.

It is considered that the Government's amendment is more in keeping with current accounting standards and will go some way to addressing concerns of trusts as to the recording of contingent liabilities in their records. The Government commends this bill and its potential to extend the life of Rookwood and other Crown cemeteries as operational cemeteries well into the medium term. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

**In Committee****Clauses 1 to 5 agreed to.****Schedules 1 to 3**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.35 p.m.]: I move Government amendment No 1:

No. 1 Page 3, schedule 1, line 6. Insert ", or any previous body of trustees for the portion concerned," after "it".

This amendment allows for the fact that trusts operating at Rookwood Necropolis may have changed their name or constitution over the years and that the trust currently managing the cemetery needs the power to revoke rights even though it did not originally grant the exclusive burial rights.

**The Hon. RICK COLLESS** [4.36 p.m.]: The Opposition will support this amendment, for the reasons outlined by the Government.

**Amendment agreed to.**

**The Hon. RICHARD JONES** [4.36 p.m.], by leave: I move my amendments Nos 1, 2 and 3 in globo:

No. 1 Page 3, schedule 1. Insert after line 11:

- (6) At any time before the expiry of the period for responding to the notice, the holder of the exclusive rights of burial concerned may enter into negotiations with the relevant body of trustees for:
  - (a) the sale of those rights to the trustees, or
  - (b) the retention of those rights.

No. 2 Page 4, schedule 1. Insert after line 12:

- (4) Despite section 24 (2), if the former holder of the revoked exclusive rights of burial is granted exclusive rights of burial for an alternative burial place, any assignment of those rights is of no effect if made by the former holder within 5 years after the date on which they were granted.

No. 3 Page 7, schedule 2. Insert after line 5:

- (4) Despite clause 29, if the former holder of the revoked exclusive rights of burial is granted exclusive rights of burial for an alternative burial place, those rights may not be transferred by the former holder within 5 years after the date on which they were granted.

Amendment No. 1 makes it clear that the holders of burial rights can choose to either retain those rights or sell them to the relevant cemetery trust if they come forward during the advertising period prior to revocation. Amendments Nos 2 and 3 ensure that any replacement burial plot provided in compensation for the loss of an existing, unused burial right cannot be transferred or traded for five years.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.37 p.m.]: The Government supports the amendments moved by the Hon. Richard Jones. Amendment No. 1 can be supported because the Government has already implied this in the legislation. However, the amendment seeks to clarify any ambiguity and confirms existing rights of rightful owners should they come forward prior to revocation. With this amendment, a trust will be unable to proceed with revocation where a rightful owner asserts the intention to retain the entitlement. On that basis the amendment removes that ambiguity and the Government supports it. The Government supports amendments Nos 2 and 3. The current legislation does not seek to restrict the rights of assigning to another person those additional rights granted to a former holder after revocation has taken place. This provision gives the trust an assurance that the claimant will use the reclaimed right personally and not take advantage of the new burial right. The amendments are supported by the Government.

**The Hon. RICK COLLESS** [4.38 p.m.]: The Opposition also supports the amendments.

**Amendments agreed to.**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.38 p.m.]: I move Government amendment No. 2:

No. 2 Page 3, schedule 1, lines 15 to 19. Omit all words on those lines.

As currently drafted, clause 24 (a) (1) of the bill may have the effect on one interpretation of removing any entitlement to compensation where the beneficiary of a burial right comes forward after the right is revoked in a cemetery where all available land is committed. This was not the intention of the bill. The intention of the bill is to fairly compensate any person who previously had the benefit of a burial right that becomes revoked because that person could not be located. This will operate regardless of whether there are spare plots. If there are no plots, trusts will have to pay compensation.

**The Hon. RICK COLLESS** [4.40 p.m.]: The Opposition also supports this amendment. I note that the ambiguity of the wording of the provision was pointed out by the shadow Minister in another place. I thank the Government for taking up the issue.

**Amendment agreed to.**

**The Hon. RICK COLLESS** [4.40 p.m.]: I move National Party amendment No. 1:

No. 1 Page 4, schedule 1, line 2. Omit "half of the". Insert instead "the full".

We have a fundamental belief that the owners of burial sites have the right to receive full compensation if their burial right is revoked. We do understand the difficulty or the potential liability that this may bring impose on trustees, but that is covered by the second amendment I will move.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.41 p.m.]: This amendment is not supported. Its effect would be to amend the provisions that limit payment of compensation to 50 per cent of the fee for a new plot at a cemetery in Rookwood Necropolis. Trusts would be financially disadvantaged if they undertake the expensive process of trying to locate owners of unused burial rights, including advertising costs, only to have to provide market prices to someone who comes forward after all those efforts. Trusts would see no advantage in undertaking the exercise and therefore no new sites would become available, notwithstanding the urgent need for those new plots in the Sydney and Newcastle areas. Additionally, it is recognised that current plot fees include a substantial amount—in the case of the Catholic Cemetery Board 40 per cent—for perpetual care of the cemetery. This component is to provide for the physical care of the cemetery in perpetuity. This fee was not included in plot fees purchased over 60 years ago.

**Ms LEE RHIANNON** [4.42 p.m.]: The Greens do not support the amendment. We are surprised that the Coalition would move it, because the 50 per cent figure is clearly fair. The trusts will be out of pocket and will incur costs in advertising to owners of plots. Increasing the compensation to 100 per cent of market value could really work as a disincentive for them to carry out the work. We all agree that this process is important. Some trusts will probably pursue it more than others. Pushing the compensation to 100 per cent could ruin the whole object of this important bill.

**Amendment negatived.**

**The Hon. RICK COLLESS** [4.43 p.m.]: I move National Party amendment No. 2:

No. 2 Page 4, schedule 1. Insert after line 9:

- (3) Any liability of the body of trustees under this section, whether actual or contingent, need not be brought to account in the financial records of the body of trustees until such liability crystallises by virtue of an order of a court for payment.

The concern is that within the accounting system these contingent liabilities will place fairly severe encumbrances on cemetery trusts, perhaps in the vicinity of \$4 million. That is what the potential contingent liability could be for Sandgate Cemetery. This would show up as a liability in its financial records and could put at risk the future management of its trust. Some of these contingent liabilities will never be crystallised, yet they will show as a liability on the records of trusts. We believe that these liabilities should not be brought to account until such time as they crystallise.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.45 p.m.]: The Government cannot support the amendment. It is designed to take into account the concerns of some trusts at Rookwood Necropolis that once a burial right is revoked the potential liability to pay compensation for up to six years thereafter under the bill is a contingent liability in their accounts for that whole period. It is a matter for trusts to take their own advice on how to manage any potential liabilities. It is a matter for each trust to decide when to commence revocation of one or more burial rights in any financial year. This is the choice of the trusts, which must decide their own financial management. A trust that revokes all unused rights would have greater exposure to the

effects of contingent liabilities in its accounting records. The responsibility of trusts, whether cemetery or reserve trusts under the Crown Lands Act or the Necropolis Act, is to make full disclosure to the Minister for their liabilities. Cemetery trusts should not receive special treatment that would allow them to disguise their liabilities, contingent or current.

**Amendment negatived.**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.46 p.m.], by leave: I move Government amendments Nos 3 to 9 in globo:

No. 3 Page 4, schedule 1. Insert after line 9:

- (3) If there is no alternative burial place available, or if there is no applicable scale of fees, the amount of compensation referred to in subsection (2) (b) is to be ascertained in accordance with the regulations.

No. 4 Page 4, schedule 1. Insert after line 15:

- (5) A former holder of revoked exclusive rights of burial may apply to the Minister for a review of any election of the relevant body of trustees under this section.
- (6) The Minister's decision on such a review:
  - (a) is final, and
  - (b) is taken to be the decision of the relevant body of trustees, and
  - (c) is to be given effect to accordingly.

No. 5 Page 4, schedule 1. Insert after line 18:

**[3] Section 37 Regulations**

Insert after section 37 (2) (b):

- (b1) the accounts to be kept by trustees under this Act,

No. 6 Page 6, schedule 2, line 7. Insert ", or any previous reserve trust for the cemetery concerned," after "it".

No. 7 Page 6, schedule 2, lines 11 to 15. Omit all words on those lines.

No. 8 Page 7, schedule 2. Insert after line 5:

- (4) A former holder of revoked exclusive rights of burial may apply to the Minister for a review of any election of the relevant body of trustees under this section.
- (5) The Minister's decision on such a review:
  - (a) is final, and
  - (b) is taken to be the decision of the relevant body of trustees, and
  - (c) is to be given effect to accordingly.

No. 9 Page 8, schedule 3.1. Insert after line 11.

- (p3) the accounts to be kept by reserve trusts,

Amendment No. 3 allows for a regulation to be made in the future if a cemetery or cemeteries at Rookwood have no plots left. The regulation will provide for compensation of 50 per cent of the market/other rate. It is considered inappropriate to set the market/other rate until such circumstances become imminent. It may be particularly relevant to cemeteries run by individual trusts, taking account of the costs of burial practices and the style and heritage issues affecting each cemetery. A similar provision would be included in the Crown Acts (General Reserves) By-law. In relation to Government amendment No. 4, the bill provides no right of appeal in respect of the type of compensation—that is, a replacement plot or monetary compensation. It is not possible to deny a beneficiary of a burial right entitlement to be heard on matters relating to natural justice under the general law.

The Minister of the day will be empowered to review the trust's decision and make final determination. This amendment will also protect trusts from potential litigation in the Equity Division of the Supreme Court on matters that in reality have minimal financial impact and would impose onerous costs on trusts defending such

matters. In relation to Government amendment No. 5, whilst the Opposition's amendment on contingent liabilities could not be supported, the Government recognises that this issue requires special attention in the legislation. No detriment is intended in relation to the right to compensation. The amendment will enable a regulation to be made to recognise contingent liabilities arising as a result of a revocation and to provide methodology for recording this unique contingency in the accounting records of cemetery trusts. The provision will be made in a regulation so that prescribed accounting procedures are flexible. This will accommodate particular needs of trusts that may be affected by the accumulation of large contingent liabilities where a decision is made to revoke a number of burial rights in a given financial year, while other trusts may revoke only a single right or a few rights, resulting in minimal contingent liabilities.

The Government will consult with trusts following the passing of the bill to ensure that their individual requirements are included. Government amendment No. 6 allows for the fact that trusts operating in a Crown cemetery may have changed their names or constitution over the years. The current management trust of the cemetery needs the power to revoke rights even though it did not originally grant the exclusive burial rights. Government amendment No. 7 was moved because clause 31B, as currently drafted, may have the effect on one interpretation of removing any entitlement to compensation when a beneficiary of a burial right at a Crown cemetery, where all available land is committed, comes forward after the right is revoked. That is not the intention of the bill. The intention is to fairly compensate any person who previously had the benefit of a burial right that is revoked but could not be located. Further, if there are no plots, trusts will have to pay compensation. The Government believes that the other two amendments are quite self-evident. I am sure all honourable members can understand the intent. I commend the amendments to the Committee.

**The Hon. RICK COLLESS** [4.51 p.m.]: The Opposition will not oppose the amendments, but I would like to record some concerns we have with them. In relation to amendment No. 3, the Opposition has a fundamental concern that the compensation referred to in section 2B is to be determined in accordance with regulations. However, given that the incidence of such compensation is likely to be small, because it applies only when there are no alternative burial places available, or if there is no applicable scale of fees, we are obviously talking about cemeteries that have closed down, and that will not be a huge impost on the community. The Opposition is concerned about the wording in amendment No. 4. I draw attention of the Minister to subsection (5), which states:

A former holder of a revoked exclusive rights of burial may apply to the Minister for review of any election of the relevant body.

I wonder whether "election" should be "decision"?

**The Hon. Ian Macdonald:** Parliamentary Counsel has advised that "election" is the appropriate word in the circumstance.

**The Hon. RICK COLLESS:** I wonder why "election" has been used. It would seem to me that "decision" would be better. I will not pursue that issue. The Opposition supports the amendments.

**Amendments agreed to.**

**Schedules as amended agreed to.**

**Title agreed to.**

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

## **MOTOR TRADE LEGISLATION AMENDMENT BILL**

### **Second Reading**

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [4.54 p.m.]: I move:

That this bill be now read a second time.

The bill contains significant crime prevention initiatives, consumer protection measures and administrative reforms to bring the regulation of motor dealers and repairers into the twenty-first century. Cars are an indispensable part of most people's lives. For many people they are the second most expensive purchase they

will make. With such significant amounts of money invested in car purchases, consumers need to have confidence that motor dealers will trade honestly and fairly. Consumers also need basic information to help them with their purchasing decisions. They need access to a statutory warranty, a complaints handling process, a disciplinary process for licensees and a compensation fund. The Motor Dealers Act 1974 contains these and other important fair trading measures. However, that Act is now more than 25 years old and consumer needs have changed, as has the industry.

When people need to get their cars repaired, they also need to have confidence that repairers are technically capable, and if they have a complaint they need to know that there is an impartial process to resolve the dispute. These and other consumer protection measures can be found in the Motor Vehicle Repairs Act 1980 but, again, that legislation is now more than 20 years old and does not fully reflect the needs of consumers or the industry. The dealers and repairs Acts have been reviewed as part of the Government's national competition policy obligations and examined in terms of the costs imposed on businesses and the net public benefit. The proposals in the bill combine outcomes from the national competition policy, motor trade review, and a range of other matters relating to better consumer protection and improvements to, and for, the industry.

Many of the matters contained in the bill were contained in exposure draft legislation which I released in February of this year. Since then a significant amount of consultation has occurred with the motor industry, the credit industry, the insurance industry, financial counsellors and consumer groups. Approximately 40 written submissions were received from a range of groups such as the Motor Traders Association, the Institute of Automotive Mechanical Engineers, the NRMA, the Insurance Council of Australia, the Australian Finance Conference, the Financial Counsellors Association of New South Wales, and the Service Stations Association, as well as from individuals, consumers, motor dealers and repairers.

In addition, the draft legislation was extensively discussed with the Motor Trades Advisory Council, which consists of representatives of a cross-section of interest groups including consumers and industry, and with the Motor Vehicle Repairs Industry Council, the co-regulatory statutory authority which administers the repairs Act.

I seek leave to incorporate the balance of the second reading speech in *Hansard*.

### **Leave granted.**

I thank all those people and organisations that took the time to make a contribution to the development of this legislation. In particular, I acknowledge the valuable input from the members of the Motor Vehicle Industry Repair Council and the Motor Trades Advisory Council who have been willing and active participants in the reform process.

I also put on record the positive role played by the peak industry body, the Motor Traders Association, in supporting the Government's efforts to stamp out the minority of disreputable dealers and repairers. This overhaul of the motor trades legislation represents a win-win for consumers as well as for the many honest and reputable businesses operating in the motor trades. It not only enhances consumer protection measures but also will remove red tape and outdated regulatory measures so that car dealers and repairers can run their businesses better. Of course, as with any other major reforms that have been undertaken within my portfolio, I am more than happy to consider any improvements that any member brings forward as the bill passes through this Parliament.

The proposals in this bill fall into three broad categories: crime prevention, consumer protection, and improving administration and removing red tape. I will turn to the main provisions in each of these categories. On crime prevention measures, according to law enforcement agencies car rebirthing is a growing source of criminal activity. It involves giving stolen cars a new identity by removing the vehicle identification number, VIN, and engine number, and issuing new identifiers. Registration provides a new identity for the vehicle, severing the link with the legitimate owner. Police and insurance company intelligence indicates that car rebirthing activities are being committed by members of gangs, who are often employed or associated with the legitimate car industry, in a structured and organised manner.

The insurance industry has estimated that this year car theft will cost close to \$1 billion with the cost to New South Wales alone estimated at \$388 million. The total cost of rebirthing in New South Wales is estimated at \$156 million, which is 70 per cent of the national cost. This affects the public through loss of vehicles, higher insurance premiums and innocent consumers having their vehicles seized by police.

Both the Motor Dealers Act and the Motor Vehicle Repairs Act have a significant role to play in the Government's comprehensive plan to crack down on this source of criminal activity. One of the ways in which the bill does this is by tightening entry requirements for licensed dealers and repairers. Licences can already be refused on the grounds that the applicants are generally not fit and proper persons. However, the bill goes further so that a person convicted of stealing motor vehicles or motor vehicle parts, receiving a stolen motor vehicle or motor vehicle parts, unlawful possession of stolen motor vehicles or motor vehicle parts will be barred from holding a licence. The prohibition will last 10 years from the date of conviction, which is consistent with the spent conviction provisions of the Criminal Records Act 1991 and existing probity timeframes in the dealers Act. There will be ongoing monitoring of convictions. Dealers and repairers will also be required to lodge annual statements disclosing any criminal convictions. Furthermore, if there is evidence that a dealer or repairer is probably receiving or dealing in stolen goods, they will be asked to show cause as to why their licence should not be revoked.

Unlicensed dealing and repairing provides an obvious avenue for the disposal of stolen cars and the rebirthing of vehicles. The bill introduces a rebuttable presumption that a person who sells more than four vehicles in a 12-month period is an unlicensed dealer. This makes it easier for unlicensed dealers to be detected. I note that jurisdictions such as South Australia and Victoria assume that a person who sells four or more second-hand vehicles in 12 months is a dealer. I understand that, not surprisingly, the legitimate industry strongly supports these new provisions. Reputable motor dealers rightly get frustrated and angry when their market is being attacked by backyard shonks and charlatans.

The bill also increases the maximum penalty for unlicensed dealing and repairing. The current maximum penalty for unlicensed dealing is 500 penalty units—\$55,000. The maximum penalty for unlicensed repair work is 20 penalty units—\$2,200. The maximum penalties for both unlicensed dealing and repairing will be increased to a more realistic 1000 penalty units—\$110,000—as part of the crackdown on these illegal activities. This will also bring penalties under this Act into line with other maximum penalties under the Fair Trading legislation. It is also proposed to increase the statute of limitations for unlicensed dealing from two years to three years, in line with limits in the Fair Trading Act 1987. The current statute of limitations for unlicensed repairing is one year. This will also be increased to three years.

The bill contains powers to assist in law enforcement if suspected goods and things come into the possession of dealers and repairers. It is proposed to allow authorised officers, for example, police or fair trading inspectors to place holding orders lasting 14 days on property held by repairers and dealers. This will include motor vehicles or their parts or accessories or other things. The broad concept of "things" will cover such items as goods, tools, raw materials or cash which appear to have been stolen or are otherwise illegal. The period of 14 days takes into account the holding costs in relation to motor vehicles and should give investigators sufficient time to identify the property. If further time is required, authorised officers will be able to seek extensions of 28 days at a time from a magistrate. The penalty for contravening this provision will be 500 penalty units.

Similar powers to impose holding orders already exist under the Pawnbrokers and Second-hand Dealers Act. It is also proposed to require motor dealers and repairers and their employees to inform authorised officers when they suspect vehicles, parts or accessories in the custody of the licensee may have been stolen or otherwise unlawfully obtained. Effective and appropriate enforcement of the dealer and repairs Acts relies on the exchange of information between the Department of Fair Trading [DFT] and other agencies such as the police and the Roads and Traffic Authority [RTA]. For example, to check whether dealer licence applicants are fit and proper persons, DFT runs a criminal record search. Investigations into unlicensed dealing also involve an examination of car registration data and other information held by the RTA.

To further assist with the enforcement of the dealer and repairs Acts, it is proposed to clarify the role of the Police Service, the Roads and Traffic Authority and interstate agencies in the release of and getting access to information under the dealer and repairs Acts. The proposed amendment will establish a legislative head of power for the exchange of information and provide grounds for negotiating access agreements between the agencies. The proposed amendment will also establish the right to seek the co-operation of relevant interstate consumer affairs and driver vehicle registration agencies in order to obtain information so as to enforce the dealer and repairs Acts. Motor vehicles and their parts are highly mobile and it is often necessary to seek information from interstate agencies. Thieves often register vehicles outside the jurisdiction in which they were stolen in order to avoid detection. Joint investigations with interstate agencies may be necessary in such circumstances.

The Government will also be cracking down on odometer fraud, commonly known in the trade as "odo flicks". Apparently, it is now possible to fit a switch to a vehicle which makes the odometer inaccurate or inoperative. Under the current legislation it is necessary to prove the device has been activated. This is extremely difficult. It is therefore proposed to create an offence of fitting a device capable of rendering an odometer inaccurate or inoperative. The maximum penalty will be the same as that for odometer interference, which is 100 penalty units. The current statute of limitations for the offences of odometer interference is two years. It can sometimes be difficult to detect odometer interference within this period. It is proposed to increase this limit to three years in line with limits under the Fair Trading Act 1987.

I turn now to measures in the bill which enhance consumer protection. As Minister for Fair Trading, I have been concerned about the imbalance of bargaining power between consumers and motor dealers when a car is purchased. As we know, high pressure sales techniques can be used. As a result, consumers can end up financially overcommitted, particularly where salespeople have a stake in the financing of the sale. The bill provides for a cooling-off period of one clear working day for consumers purchasing a car on linked credit—for example, where credit is obtained from the dealer or through a credit provider linked with the dealer. The cooling-off period will be able to be waived, under strict conditions. For example, dealers will be required to notify consumers of the cooling-off period through documents prescribed by the Department of Fair Trading. The proposed cooling-off period will not apply to sales by dealers to trade owners or sales by auction. Additionally, it will be an offence for a dealer to dispose of a vehicle traded-in as part of a sale during the cooling-off period. A maximum penalty of 200 penalty units will apply.

The purchaser will not be able to take possession of the vehicle during the cooling-off period unless the dealer agrees. This should address complications which arise if the vehicle is damaged while in the possession of the purchaser. If the purchaser terminates the contract of sale during the cooling-off period, he or she is liable to pay the dealer \$250 or 2 per cent of the purchase price, whichever is the lesser, in acknowledgment of the costs of the transaction. Fair trading legislation provides some protection where there has been dishonesty on the part of the trader or where the vehicle is defective. However, a cooling-off period importantly provides a preventative measure not currently available. A combination of the inexperience or naivety of the customer and undue pressure by the salesperson can result in customers agreeing to purchase a vehicle which is not appropriate for their needs or on terms which are either beyond their means or unreasonably onerous. In such circumstances a cooling-off period has the potential to provide a circuit breaker—a means by which a mistake can be prevented from becoming a larger and more expensive problem for all parties concerned. The resulting reduction in complaints and disputes should ultimately benefit both traders and consumers.

To ensure that the cooling-off legislation achieves its objectives, I intend to have this legislation closely monitored by the Motor Trades Advisory Council and formally reviewed one year after its commencement. Another consumer protection measure in the bill clarifies dealer responsibilities in relation to the proceeds of consignment sales. Dealers are already required to put money received from the sale of a consignment motor vehicle into a trust account not later than the day after the money is received. The dealer must account for the proceeds of the sale to the consignor within 14 days. However, there is an anomaly in the legislation

where trade-ins are accepted as part of the payment for a vehicle sold on consignment. It is unclear whether a dealer, who sells a vehicle on consignment, has to pay only the cash part into the trust account or whether the monetary value of the trade-in also has to be paid into the trust account. Where the trade-in is not sold within 14 days, the dealer may not have to account in money for the trade-in.

The Department of Fair Trading advises me that the number of dealers involved in consignment sales is increasing. Private consignment sales appear to be a way for dealers to upgrade the standard of stock in their car yard where they would not be in a financial position to do so if they had to rely on their own financial means to purchase stock. While consumers may be able to access the Motor Dealers Compensation Fund if they suffer a loss if a dealer fails to comply with the legislation, the lack of coverage of trade-ins can leave consignors exposed. The bill provides that a dealer who receives motor vehicles on consignment must deposit in a trust account an amount equal to the value of any consideration received—such as a trade-in—for the sale. This will be a significant and important reform. There have been many claims in recent years on the Dealers Compensation Fund in relation to consignment sales. In 1998, there were 54 claims as a result of the consignment centre Fairy Meadow going into liquidation. In 1999, there were approximately 40 claims. In 2000, there were 10 claims. In 2001, there have been 13 claims to date. While the proposal essentially requires dealers to purchase the trade-in, there is a need to secure the value of a consumer's goods held by a dealer. Dealers are, in effect, using consumers' property.

Another area which needs attention are the claims that consumers can make against the Motor Dealers Compensation Fund. The dealers Act currently permits a claim against the Motor Dealers Compensation Fund where there has been a failure to comply with the dealers Act or regulations or there has been a failure to account by a dealer. The Act does not cover breaches of contract which are to the detriment of the consumer, for example, where a dealer agrees to pay the proceeds of a trade-in to a consumer by cheque but does not do so and the dealer goes into liquidation. It is proposed to widen the scope of claims which may be made against the fund to include losses incurred by a person as a result of a breach by a dealer or car market operator of a contract made by that person with the dealer or car market operator—for example, failure to provide the proceeds of a trade-in. The kinds of contractual breach for which a claim may be made will be prescribed in the regulations.

I turn now to the measures in the bill that will improve administration of the motor dealer and repairer licensing schemes. The Motor Vehicle Repairs Act is currently administered by the Motor Vehicle Repairs Industry Council [MVRIC], a statutory authority with a council including representatives from the Motor Traders Association, the Service Stations Association, the Institute of Automotive Mechanical Engineers, the NRMA, the Australian Industry Group, the Australian Manufacturing Workers Union, the Australian Workers Union and consumer representatives. At present, MVRIC is headed by a full-time chairperson who is both the chief executive officer, responsible for the day-to-day administration of the licensing regime, and the head of the executive council that oversees the licensing regime.

A review of this structure indicates that administration of the Act would be improved and accountability clarified by separating the administrative functions from the advisory functions. Therefore, the bill establishes a statutory authority, the Motor Vehicle Repairs Industry Authority, headed by a general manager, that will handle the day-to-day administration of the repairer licensing. The authority will be subject to the control and direction of the Minister. The activities of the general manager of the authority will also be open to oversight by the Motor Vehicle Repairs Industry Authority Council, which is itself accountable to the Minister and may be directed by the Minister. The council will also have an advisory role. The council is to be headed by a part-time chairperson appointed by the Minister.

The range of interests represented on the restructured council will remain largely the same as at present. However, there will now be a representative of the insurance industry on the council. It has been estimated that approximately 80 per cent of repair work is undertaken for insurers. The insurance industry has a strong claim to be identified as a consumer of repair services and will certainly be able to contribute to discussion on the standard of repair work. Representation from specific unions will be replaced with representatives nominated by the Labor Council. Also there will be a nominee of the Minister for Police on the council, reflecting the Government's initiatives to combat car theft and rebirthing.

The administrative arrangements will be reviewed two years after their implementation in order to ensure that they are operating optimally. As I indicated earlier, the motor trade legislation does not adequately reflect changes in the industry. The Repairs Act currently includes 13 classes of repair work for which repairers' licences and tradespersons' certificates are granted. These categories—which include those of motor mechanic, panel beater and auto-electrician—have been in place for many years. An automotive retail services and repair training package was endorsed in 1999 as part of the national training framework. This training package contains categories of trades and callings for the motor vehicle repair industry which are different from those under the current Act. The new scheme also includes provisions for multiple entry and exit points, choice of elective subjects and recognition of prior learning. The existing licensing categories under the Act are not consistent with the national training package and the scope of repair work to be performed.

The bill abolishes the existing categories in the legislation. Revised repair certification categories which reflect national training developments will be placed in regulations made under the Act. The bill also amends the licensing scheme to remove a number of unnecessary administrative burdens. At present a registered second-hand vehicle sold by a dealer must have a roadworthiness certificate not more than one month old provided to the purchaser at or before the time of sale. The industry has been concerned that with a trend for vehicles to remain on site for longer periods, this provision is unduly onerous. There will be a regulation-making power to vary the life of a roadworthiness certificate attached to a vehicle sold by a dealer, thereby promoting administrative flexibility.

Furthermore, the current requirement for licensed dealers and repairers to hold a separate licence for each business site they operate and keep a separate register for each business site will be abolished. Instead, licensees will nominate the place or places at which they intend to carry on business. Licence fees will reflect the number of sites under each licence. Accountability in relation to stock and traceable parts held at each site will be maintained by retaining the requirement for separate records to be kept for sales, stock and parts movements at each licensed site. However, if a licence is granted in respect of more than one place of business, a register may be kept at only one of those places of business if the register is kept in a form which allows it to be accessed at all the places at which the business is to be carried on, for example, a linked electronic register.



The bill will bring the motor dealers compensation fund in line with other self-funding entities in the Fair Trading portfolio by enabling the costs of administering the Motor Dealers Compensation Fund, as certified by the Director-General of the Department of Fair Trading, to be recovered by the Department of Fair Trading from the fund. Since 1 July 1996 the Department of Fair Trading has performed the administrative functions of various self-funding entities—for example, the rental bond board. The costs associated with those functions are paid for on an operational basis in relation to activities performed and thereby reduce reliance on government contributions or departmental cash reserves.

The recovery of administration costs in relation to the motor dealers compensation fund, funded by licence fees to support warranty and other dealer disputes, would be consistent with this principle. The opportunity has also been taken with this bill to make the Repairs Act consistent with the Dealers Act where appropriate. Both Acts have similar objectives. They both have consumer protection and crime prevention aims, they both contain entry requirements, establish a dispute resolution process, provide for the discipline of licensees and also establish a contingency fund.

The main amendments are: a system of undertakings for motor vehicle repairers in relation to unjust conduct will be established; repairers will be required to submit an annual statement in order to update licensing details; the term "fit and proper" under the Repairs Act will be defined to include whether the applicant has been convicted of an offence involving fraud or dishonesty in the past 10 years or whether the applicant has been convicted of an offence against the Act or another Act which is administered by the Minister for Fair Trading; the disciplinary provisions applicable to motor vehicle repairers will be consistent with those applicable to motor dealers; penalty notices may be issued for certain offences under the Motor Vehicle Repairs Act.

Further amendments are that the Administrative Decisions Tribunal rather than the Local Court will hear appeals against repairer licensing decisions by the Motor Vehicle Repairs Authority; penalty levels under the Repairs Act will be increased to be more consistent with the Motor Dealers Act; the motor vehicle repairs contingency fund will be made more consistent with the motor dealers compensation fund, including removal of the \$3,000 limit on claims, which has been in place since 1980, and there will be a new limit of \$30,000; provisions in the Dealers Act which allow the police to serve an order on a licensee to produce records at a specific location at a given time and date will be included in the Repairs Act.

I turn now to the Registration of Interests in Goods Act, which provides for the registration of interests in vehicles. The opportunity is being taken to clarify one of the offence provisions in this Act. Section 7 (2) of the Registration of Interests in Goods Act creates an obligation on an interest holder to cancel an interest when a registered interest ceases to be a registered interest. Section 17 (2) of the Act creates an offence where the director general is notified later than 14 days after a registrable interest has ceased to exist. The maximum penalty under this section is \$550. However, the Act does not currently define when a registrable interest ceases to exist—that is, when the 14-day period begins. Concerns have been raised by car dealers about the late removal of encumbrances by credit companies in some instances. This delays the sale of used vehicles with an encumbrance. It is proposed to amend the Act to clarify that one circumstance in which a registered interest ceases is when all monies secured by the interest or all obligations secured by the interest have been paid or performed.

This amendment should clarify the obligations of interest holders under the Act. It is also proposed to replace the court imposed penalty with a penalty notice system, providing the option of a simplified compliance regime. In conclusion, cars are likely to be the second most expensive purchase that consumers make. The proposals in this bill will bring the regulation of the motor trades into a new era in order to meet the challenges of improving consumer protection, crime prevention and improving administration. They address and balance many current concerns of consumers and businesses. I commend the bill to the House.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [4.57 p.m.]: I thank the Minister for his generosity in delivering part of his speech, because that has allowed me an opportunity to present the Opposition's views on this bill. I am pleased to lead on behalf of the Coalition on a bill that will amend the Motor Dealers Act 1974 and the Motor Vehicle Repairs Act 1980. When the Motor Dealers Act was first enacted in 1974, the motor vehicle industry in Australia was very different from the industry we see today. In 1974, Holden produced its three-millionth vehicle in Australia, the HJ, and Ford was selling its recognisable XB version of the GT Falcon. Today, the number of different models and technological advances in vehicles has grown significantly.

Therefore it is appropriate that the legislative framework relating to motor dealers and repairs is being updated to suit the industry in the twenty-first century. As the Coalition is supportive of the majority of the changes in this bill, I do not intend to say much about them. However, I will address a few areas in which improvements could be made and where there are concerns that need to be highlighted. The first of those relates to the commonly called cooling-off period. The current MTA standard contract for the purchase of a car provides for a 5 per cent penalty in the case of a purchaser cancelling the contract. In addition, the standard does not provide for a cooling-off period. The amending bill significantly reduces the penalty and puts in place a cooling-off period.

The cooling-off period applies to contracts signed by a purchaser when credit for the vehicle is provided by the motor dealer or a financier linked to the dealer. The period in which a purchaser may cancel a contract is one clear business day from the time the contract is signed—that is until 5.00 p.m. on the next trading day. If the contract is cancelled within that time, the purchaser is liable to pay to the dealer a sum of \$250 or 2 per cent of the purchase price, whichever is the lesser amount. The bill allows a purchaser to waive the cooling-off period if the purchaser signs an appropriately regulated waiver form.

I note that the Minister has indicated that the Department of Fair Trading will monitor this provision, and I would like to think that the Department of Fair Trading will not be subject to a number of complaints from

consumers that they were pressured into signing the waiver by the very small minority of motor dealers who do not abide by ethical business practices. It is important to note the difference in the practicalities of this cooling-off period that will apply in different circumstances. In many regional and rural areas motor dealers trade 5½ days per week; most city dealers trade seven days per week. In regional and rural areas when a contract is signed on a Friday and the dealer trades only until lunchtime on a Saturday, the cooling-off period will end at 5.00 p.m. on the Monday and not on the Saturday.

It has been suggested that the Minister should consider allowing the cooling-off period to be extinguished at 5.00 p.m. on the next day, regardless of whether it is a full business day, with the cancellation of a contract permitted via a 24-hour fax line or similar electronic communication device. This would allow a purchaser to simply send a fax back to the dealer to cancel the contract at the earliest possible opportunity without having to wait until the dealer reopens on the Monday. Not only would this allow the purchaser to rescind a contract at an earlier time, it would also give the motor dealer the ability to quickly arrange for the vehicle to go back onto the market when the motor dealer reopens the next working day.

In relation to the delivery of vehicles subject to a cooling-off period, it is understood that the car will not normally be available to be purchased until the cooling-off period has expired or a waiver has been signed. This will avoid a situation in which a vehicle is taken off the dealer's premises and misused or damaged and then returned to the dealer within the cooling-off period with little financial penalty, which will be at most \$250. I acknowledge that the Greens intend to move an amendment in Committee to reduce that figure to \$125 or 1 per cent of the vehicle's value, whichever is the lesser. The Opposition will oppose that amendment. As honourable members would appreciate, there are people with unsound motivations who may attempt to exploit any provision allowing for the delivery of a vehicle prior to the expiration of the cooling-off period. It has been put to me by the motor trade industry that the waiver document, which may be signed by a purchaser of the vehicle when credit is provided by the dealer or a linked credit provider, should be a separate form to the purchase contract. This would allow for clearer wording and for the waiver to take on increased importance.

This suggestion has merit for several reasons. Most car buyers do not read every word of a purchase contract before they sign it. In fact, many people do not read the full implications of any contract before they sign it. If such a waiver were simply added to the normal purchase contract, there would be nothing to stop someone from simply signing the waiver without realising the implications of doing so. By separating this waiver from the purchase contract, it could be formatted in such a way as to emphasise its importance to the purchaser and to ensure the highest possible rate of understanding in the minds of consumers. Another reason for the separation is merely for convenience. The vast majority of car purchases in this State are not made with credit supplied by the motor dealer or a linked credit provider and, therefore, there is no need for a waiver to appear on the contracts. By introducing the need for a waiver clause as part of a standard contract one of two things needs to happen: either motor dealers have two different types of contracts—one with a waiver clause on it and one without—or both contracts have a waiver clause included in them.

Where a dealer has two separate contracts the possibility of confusion is increased and mistakes may be made; the wrong contract may be signed. In addition, two separate stocks of what are quite large forms are required, and that will add to the overhead costs of dealers. If one contract is used, the waiver clause has the potential to add confusion to consumers. The waiver would, by necessity, need to be prominent to ensure that purchasers affected by a cooling-off period are aware of what they are signing. Dealers would be faced with consumers questioning the provision of such a clause when they are not covered by the provisions of this cooling-off period. By having a separate form for the waiving of the cooling-off period, sufficient provision could be made to ensure that consumers are fully aware of the implications of signing such a waiver, without adding to the multitude of paperwork and clauses facing the majority of car purchasers who would not be subject to a cooling-off period.

I ask that the Minister consider this suggestion from the industry and allow for a separate form for the waiving of the cooling-off period. The cooling-off period appears to seek to protect private—that is, non-business—consumers who purchase a non-commercial vehicle for their private use. It is therefore logical to assume that the Minister is seeking to exclude from the provision of the cooling-off period businesses that purchase non-commercial vehicles on credit, whether by means of hire purchase or commercial lease, for their business use or the use of their staff. These types of purchases account for a significant proportion of non-commercial new motor vehicle purchases. If this is the case and the Minister is seeking to exclude these purchases, perhaps an additional provision should be inserted in clause 29CA (2) to read "a sale by a dealer to a registered business" and appropriately defined as a "registered business".

Proposed section 29CA (2) (b) exempts a sale at an auction from the cooling-off period, and I understand that at least one industry association is opposed to this provision. It argues that most, if not all, motor

vehicle auction houses have finance facilities available on site for potential purchasers, and their advertising promotes those facilities. Further, auction staff actively promote such facilities to potential buyers prior to and after the auction, with the auction house receiving a commission in one form or another on referrals. As such, the industry association argues that auction houses are no different from car yards in terms of the link between the sale of the vehicle and the financing of the vehicle. Therefore, the high-pressure tactics to which the Minister constantly refers in arguing the need for a cooling-off period certainly exist. The industry association points out that proposed section 29CA (2) (b) should be deleted and that close monitoring would be necessary if an auction house wished to argue that such sales were not arranged or facilitated by the dealer as per proposed section 29CA (2) (d).

As is the trademark of the Minister for Fair Trading, this bill was preceded by a media blitz proclaiming its virtues, including the introduction of a requirement for motor dealers to disclose whether a vehicle has previously been flood damaged or written off. Honourable members searching the bill for this important provision will not find it included in the legislation. Yet again this Minister is choosing to legislate by regulation by leaving the control of the sale of the flood-damaged and written-off cars to be determined by regulation. It is extremely important that these regulations work effectively for the protection of car buyers and reputable motor dealers and to weed out and punish the shonks—as the Minister calls them—who sell cars that are either dangerous or have a much shortened life span.

However, it is important that motor dealers who are genuinely unaware that a vehicle has been flood damaged or written off are not punished in the quest to weed out the shonks. In the age of ever-improving repair and restoration it may be possible for damage occasioned some time ago to not be detectable on first or even careful inspection. I trust that the Minister and his department, in consultation with the industry and consumers, will come up with a fair and equitable provision. The Coalition supports the provision of the bill that allows for increased penalties for unlicensed dealers. Anyone found guilty of unlicensed dealing or repairing will be subject to a fine of up to \$110,000. I note that an unlicensed dealer is defined as a person presumed to have sold more than four vehicles in a 12-month period.

It has been put to me by members of the motor vehicle industry that the definition of unlicensed dealing should be expanded to include the sale, purchase or exchange of more than four vehicles in a 12-month period. I believe that such an expansion of the definition of unlicensed dealing has considerable merit. Honourable members would appreciate that the sale of cars is just one component of the illegal trading of motor vehicles. Under this legislation it would appear that there is nothing to prevent a person from trading vehicles on a continuous basis as long as they do not sell them. For example, at the lower end of the market it is not uncommon for someone to trade a clapped-out Torana and a motorbike for a 1980-something Corolla and then trade up to an early 1990 Ford Laser.

There is obviously nothing wrong with this practice if it is done for private, non-commercial purposes. However, someone who trades in vehicles regularly—more than four times in one year—may be involved in unlicensed dealing in motor vehicles. By bringing sales, purchases and exchanges within the definition of unlicensed dealing, the potential to stop unscrupulous people feeding off the disadvantaged in our community is increased. Under current legislation the definition of a dealer is someone who buys, sells or exchanges vehicles, so it is not unreasonable to suggest that the definition of an unlicensed dealer should be consistent with that.

As to the new maximum penalty of \$110,000, I place on record my concern that these increased penalties will not be enforced by the courts. Indeed, backyard dealers and repairers could get away with little more than a slap on the wrist. Previous court cases clearly illustrate the need to impose maximum penalties. In February last year an unlicensed Riverwood car dealer, Louis Cesar, was convicted of interfering with the odometers of 10 cars and fined just \$10,000. He was also fined just \$3,000 for selling cars without a motor dealer's licence and ordered to pay a total of \$70,300 in compensation to his victims. Mr Cesar had wound back the odometer on 10 cars by a total of 749,240 kilometres, significantly increasing the value of the cars, which he then sold to unsuspecting motorists who discovered only later that their cars were significantly more second-hand than they had been led to believe.

In September this year an unlicensed Dapto car trader was fined just \$6,616 by the Wollongong Local Court after buying and selling seven cars, although he was unlicensed, and winding the odometer back on one of them by more than 99,000 kilometres. At about the same time an unlicensed Petersham man who used the names of licensed motor dealers without their knowledge to sell 60 cars within 12 months was ordered to pay just \$13,536 by Burwood Local Court. In responding to that court decision, the Minister proclaimed in a press release on 4 September 2001:

Shonky car dealers are a blight on the motor trade and a threat to consumers.

The Minister expressed no concern about the abysmal \$13,536 fine imposed on someone who had used motor dealers' names illegally and sold 60 cars within a 12-month period. Yet on the very next day—5 September 2001—the Premier went into the other place and declared war on car rebirthing gangs, outlining a range of new penalties to crack down on these gangs, including increasing penalties for unlicensed dealing and repairing to \$110,000.

The incredible gulf between the Minister and the Premier within a 24-hour period was extremely disappointing. On 4 September the Minister expressed absolutely no concern about the \$13,536 fine imposed on someone who had illegally sold 60 motor vehicles. Yet on the following day the Premier announced an increase in the maximum penalty for unlicensed dealing to \$110,000. I will be interested to hear the Minister explain his obvious ignorance of the measures to be announced by the Premier the very next day. The Minister must have been completely unaware of the announcement, otherwise he would have labelled a paltry fine of just over \$13,536 as manifestly inadequate. What other explanation can there be?

Schedule 1 [9] of the bill removes the requirement for a licence holder to have relevant industry experience. Sectors of the automotive industry have expressed concerns about the deletion of this provision, pointing out that experience has shown that the high turnover of businesses in the motor trade is no less than among small businesses generally. They believe the removal of the industry experience provision will increase the number of motor trade business failures and will ultimately impact on consumers and the industry, particularly if compensation to consumers needs to be paid from the Motor Dealer Compensation Fund. Such an increase in failures will also impact harshly on the reputation of the industry. Although it could be argued that the removal of this experience provision is necessary in order to comply with national competition policy requirements, it is not easy to see where the benefits to consumers lie in this policy decision.

This proposed legislation is the result of consultation over a number of months with the community, motor dealers, repairers, their industry associations and other interested parties. Last year the Minister released a number of case studies that he argued supported his call for the introduction of a cooling-off period. The Minister told the public and the media that these cases graphically outlined the adverse effects on consumers of the unscrupulous practices of shonky sales people. I am sure that all honourable members deplore any action taken by a dealer to put pressure on vulnerable community members to purchase a car that they are unable to afford financially.

These case histories included the story of a couple with three children. The couple, who earned \$30,000 a year, signed up to buy a car worth \$22,000 after being pressured by a salesperson. They simply could not afford to make the repayments. We also heard about an intellectually disabled man who thought he had signed to take a test drive of a new Camry but in fact had purchased the \$22,000 car on finance. We were then told about a young man who signed paperwork that he thought was an inquiry about finance but what was in fact a so-called "legally binding agreement" to buy a motor vehicle. In this context I highlight concerns that have been raised with me on several occasions about the validity of these case studies. I state from the outset that I am happy to be corrected on this matter, but it has been put to me several times previously that these case studies are not three separate cases but simply a composite of a number of cases that have been formed into three separate stories in order to achieve the best possible angle. In light of those concerns I seek the Minister's personal assurance that these are genuine, separate case histories concerning three specific people and not simply a collage created for the sake of a good story.

In my previous occupation as a police officer in this State I was involved in a number of operations that targeted car rebirthing gangs. These gangs are highly organised and deal with a large number of motor vehicles, and subsequently significant sums of money. During one investigation of a smash repairer on a western Sydney industrial estate my team uncovered an operation to rebirth stolen luxury motor vehicles. Those involved were part of a gang that operated within the Roads and Traffic Authority [RTA] and an insurance company that I will not name. Corrupt officers within the New South Wales Police Service were also involved, as was a rather well-known motorcycle gang.

The corrupt RTA official would get a telephone call to say that a certain motor vehicle was needed—it was always a luxury car such as a top-line Mercedes-Benz or BMW. The official would then wait for an opportunity to search the RTA computer system to identify a motor vehicle fitting that description that had been registered recently. The motorcycle gang members would then go to an address supplied by the RTA official and steal the motor vehicle. It would be taken to an industrial area where the gang had the use of a warehouse and the motor vehicle would be stripped down to the chassis, which would then be dumped at another industrial area. An anonymous telephone call would be made to the local police reporting the vehicle. The unsuspecting

police—those not involved in the corrupt conduct—would recover the chassis as per normal practice, and the corrupt personnel within the insurance company would wait for the vehicle to be returned to the company where it would remain in a holding yard for some time until it was cleared.

The car chassis would eventually be auctioned and purchased at a reasonable price—these cars were worth a couple of hundred thousand dollars and the chassis could be bought much more cheaply, of course—put on the back of a tow truck and returned to the warehouse where the original parts would be replaced. New numbers would be put on the engine block and on the car's identification plate and the car would then be taken to another State where it would be reregistered and sold. That was happening on a very regular basis within the luxury motor vehicle industry, and the trend has continued. It will be interesting to see exactly what this legislation achieves in the eradication of such corrupt conduct within the confines of New South Wales as rebirthing takes place nationally and internationally. A number of these cars find their way overseas and some cars stolen overseas find their way into Australia.

The bill will allow also appropriately authorised officers, including police officers, to place holding orders for up to 14 days on property held by repairers and dealers if they reasonably suspect that the property is stolen. This provision is important to allow for thorough investigation of possibly stolen vehicles and spare parts. However, this provision must not be misused by those appropriately authorised officers and must not be used to assume that a majority of those working in the automotive service and repair industries are involved in motor vehicle theft and deal with stolen components. Such illegal activity is limited to a fraction of the industry; the vast majority of people involved in the car rebirthing industry operate outside the licensed repair industry. The introduction of on-the-spot penalty notices must not and cannot be allowed to be misused by these authorised officers.

This legislation will abolish the Motor Vehicle Repair Industry Council and replace it with the Motor Vehicle Repair Industry Authority and a council of the authority. It is exceedingly important that the new council maintain its sovereignty from the Department of Fair Trading and the director-general in overseeing the motor vehicle repair industry. The present Motor Vehicle Repair Industry Council was severely restricted in its activities during the review process that led to the introduction of this bill, including having no full-time council chairman for over a year. The Coalition will closely monitor the operation of the new authority and its council to ensure that consumers and the automotive industry benefit from these new arrangements.

The Coalition supports a number of other provisions in the bill, which I have not previously mentioned, including the prohibition of people convicted of certain motor vehicle offences from holding a dealer or repairer licence for 10 years; a widening of the scope of claims allowable under the Motor Dealers Compensation Fund to include losses incurred as a result of a breach of contract by a dealer; the requirement that dealers, repairers and employees inform police and other authorities when they suspect vehicles or parts have been stolen; the establishment of an offence for fitting a device capable of rendering an odometer inaccurate or inoperative; and making consistent the licensing and disciplinary provisions applicable to motor vehicle repairers and motor dealers.

As I pointed out at the commencement of my contribution, the Opposition supports the majority of changes proposed in the bill; consequently, I have not endeavoured to address those changes in detail. However, I reiterate that where further improvements can be made, any suggestions to achieve those improvements should be taken on board by the Minister and the department. I thank my colleague in the other place the honourable member for Oxley, who led the debate on this legislation in that Chamber on behalf of the Coalition. In conclusion, I point out that this bill should not be taken as an indictment of the greater majority of motor dealers and repairers throughout the State who operate ethically. Many of the bill's provisions will be used to crack down on the very few who continue to operate outside the law and outside business ethics. As a community we must hit hard those involved in motor vehicle theft, rebirthing and unscrupulous business practices that impact on consumers. However, we should not unfairly target the professional men and women in the automotive industry.

**The Hon. IAN COHEN** [5.24 p.m.]: The Greens are pleased to support the Motor Trade Legislation Amendment Bill. It represents a comprehensive overhaul of the regulatory system for motor dealers and repairers and introduces three main initiatives: crime prevention measures, consumer protection initiatives and administrative reforms. Reports of car rebirthing have appeared recently in the media. I would not attempt to explain the offence of rebirthing motor vehicles in the same detail as the Leader of the Opposition was able to in his most interesting contribution. Essentially, stolen cars are given new identities with stolen parts. This well-organised industry in this State, in other States and other countries involves the transfer of identification numbers from wrecks to stolen vehicles for resale.

Car theft costs New South Wales around \$420 million per year, and rebirthing accounts for around \$156 million of that cost. Nationally the cost is almost \$1 billion. Until now police have had inadequate laws to tackle the car rebirthing industry because of the need for engines to match bodies in order to prove criminal charges. Individuals who stole a vehicle, removed its engine and replaced it with that of another vehicle avoided conviction for the offence of car stealing. Under this new law it will be an offence to steal motor vehicle parts as well as cars. The rebirthing of cars does not involve solely individuals in the community. A report last year by the Independent Commission Against Corruption [ICAC] found that 10 Roads and Traffic Authority [RTA] officials had acted corruptly and were found to be involved in the rebirthing process.

The Commissioner of the Independent Commission Against Corruption, Irene Moss, believed that the racket uncovered in her report was only the tip of the iceberg. Ms Moss said that given the vast nature of the RTA and its 4.1 million motor vehicle registrations per year there is no doubt the problem is more widespread than being confined to the officers named in her report. The corrupt officers' activities included charging hundreds of dollars for a blue slip inspection for a rebirthed car when the normal price is \$50 for an ordinary car. The Greens support the new consumer protection measures, particularly the cooling-off period for cars bought on linked credit, but wonder whether one day is sufficient. Section 43 of the Victorian Motor Car Traders Act provides for a cooling-off period of three clear days, and section 25B of the Australian Capital Territory Sale of Motor Vehicles Act provides for a cooling-off period of three clear business days.

The Greens are pleased that the cooling-off provisions in this bill will be reviewed after one year of operation. That is an important feature. Many cars are sold on weekends, and particularly to unsuspecting young people who are not experienced in dealing with aggressive car salesman—who do not get their reputation for nothing. Consumer protection is essential, particularly with regard to the sale of motor vehicles to young people who often sign contracts to buy motor vehicles at prices beyond their means. The provisions relating to the repair of damage to vehicles must be considered as a separate issue. A cooling-off period of three clear days would be more appropriate especially when on many occasions people sign contracts to purchase motor vehicles when they really do not understand what they are doing, do not read or cannot read or do not understand properly the terms of the contract they sign, and find they are stuck in a difficult and costly situation. It is reasonable to extend the cooling-off period. Other than that, the Greens are pleased to support the bill.

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [5.28 p.m.], in reply: I thank the Leader of the Opposition and the Hon. Ian Cohen for their contributions to the debate. I advise that different forms of cooling-off periods will be available. The Hon. Ian Cohen acknowledged that the Government has made a commitment to review the provisions after 12 months. The concerns raised with regard to unlicensed dealers have been noted. The Government will monitor those issues and consider further legislative changes should they be needed.

The honourable member forgot to mention that the maximum penalties under the Act will be doubled. That should send a very clear message to the court that the Government views offences under the Act very seriously. If the honourable member had done some research, he would have realised that compliance activities and successful prosecutions by Fair Trading inspectors have increased dramatically. Doubling of penalties will provide increased support for these hard-working inspectors. In relation to the honourable member's question with respect to case studies, I am advised by departmental officials that they were forwarded to the department by consumer advocates, financial counsellors and the like, who raised concerns about these suspect practices.

**Motion agreed to.**

**Bill read a second time.**

### **In Committee**

**Clauses 1 to 5 agreed to.**

### **Schedule 1**

**The Hon. IAN COHEN** [5.31 p.m.]: I move the Greens amendment circulated in my name:

Page 12, schedule 1 [39], line 8. Omit "\$250 or 2%". Insert instead "\$125 or 1%".

New sections 29CA to 29CC introduce a cooling-off period of one day for cars bought on credit when the consumer obtains credit from the car dealer. The Greens support these new sections, but we note that the

cooling-off period is three days in other jurisdictions, such as Victoria and the Australian Capital Territory. New section 29CC (4) specifies that if a purchaser breaks a contract during the cooling-off period he or she must pay a debt of \$250 or 2 per cent of the purchase price, whichever is the lesser. The Greens believe that the penalty for terminating the contract during the cooling-off period is too high. A fair amount is \$125 or 1 per cent of the purchase price, whichever is the lesser. In the Australian Capital Territory and Victoria the amount is \$100 or 1 per cent of the purchase price, whichever is the greater. That seems to be working quite well. I commend the amendment to the Committee.

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [5.32 p.m.]: Although the Government appreciates the intent of the amendment, the model in the bill is a fairer way to go. Cooling-off periods involve costs to dealers. These arise from dealers having to hold stock that is unavailable for sale, and also having to hold trade-ins. This ties up display space and working capital, and delays access to payment. Sales opportunities may be lost if consumers change their minds at the end of the cooling-off period. Other costs, according to dealers, include additional finance costs, lost advertising charges, staff costs and lost commissions. Imposing a small penalty on consumers for cancelling the sale acknowledges the cost of the cooling-off period to dealers, and also discourages the buyer from entering into a contract without some consideration of the consequences.

Cooling-off periods in other legislation also attract a small fee. For example, under section 66V of the New South Wales Conveyancing Act 1990, which relates to the sale of real estate, the purchaser forfeits 0.25 per cent of the purchase price of the property to the vendor upon cancellation. Other jurisdictions in Australia that have a cooling-off period also impose a charge for cancelling a sale. For example, in the Australian Capital Territory and Victoria consumers must pay \$100 or 1 per cent of the value of the vehicle, whichever is the greater amount. This bill provides that consumers must pay \$250 or 2 per cent, whichever is the lesser amount. The Government believes that this restructure is a more adequate reflection of the cost involved in the cooling-off period than the \$100 or 1 per cent fee that applies in Victoria and the Australian Capital Territory.

In submissions to the Government on the cooling-off period it was suggested by some motor trader groups that 5 per cent of the purchase price would be necessary to recover dealer costs from termination of a sale. The Government believes that the figure of \$250 or 2 per cent, whichever is the lesser, is an appropriate compromise. It should also be noted that purchasers of vehicles costing less than \$5,000 are better placed under the proposed New South Wales legislation than they are in Victoria or the Australian Capital Territory. I hasten to add that we will consider this matter when we review the bill. Therefore, the Government opposes the amendment.

**Amendment negatived.**

**Schedule 1 agreed to.**

**Schedules 2 and 3 agreed to.**

**Title agreed to.**

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

## **NATIONAL PARKS AND WILDLIFE AMENDMENT (TRANSFER OF SPECIAL AREAS) BILL**

### **Second Reading**

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [5.37 p.m.]: I move:

That this bill be now read a second time.

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

**Leave granted.**

Special areas are tracts of land surrounding the water storages for the Greater Sydney, Blue Mountains and Illawarra regions. Together with parks and reserves that have been established under the *National Parks and Wildlife Act 1974*, they comprise an extensive and largely contiguous band of unspoiled bushland that protects our catchments and water quality.

This Government is committed to the protection of drinking water quality as well as the protection of the ecological integrity of natural areas via the management of special area lands.

In accordance with section 45 of the *Sydney Water Catchment Management Act 1998*, the Minister for the Environment undertook a review of the special areas lands. The purpose of the review was to determine whether the objectives of the Sydney Catchment Authority, in relation to the future management of the special areas, would be more effectively attained if the lands concerned were vested in the Minister administering the *National Parks and Wildlife Act*.

Subsequently, on 26 June 2001, I determined that the lands within the Warragamba, Katoomba, Blackheath, Woodford, O'Hares Creek and part of the Shoalhaven special areas should be transferred from the Authority to the National Parks and Wildlife Service.

This will result in around 40,000 hectares being added to the Blue Mountains and Kanangra Boyd National Parks, increasing their area by approximately 15 per cent. As the Member for the Blue Mountains, the Minister for the Environment is particularly pleased to see these park additions take place.

These transfers are consistent with Peter McClellan's Sydney Water Inquiry recommendations. He recommended that the special areas be declared as national parks or nature reserves and that the National Parks and Wildlife Service should manage them for both water quality and broader ecological considerations.

The addition of the special areas to the national park estate will ensure the future protection of these water catchments and represents a major conservation benefit for NSW.

I understand that the Blue Mountains Special Areas contain relatively undisturbed native vegetation communities, which support a rich diversity of native plant and animal species. This includes a number of rare and endangered species, such as the Spotted-tailed Quoll, Barking Owl and Red-Crowned Toadlet. They also contain a number of known Aboriginal sites.

A large proportion of the approximately 258,400 hectare Warragamba Special Area is already reserved as part of the national park estate. In fact, this special area is part of one of the largest conservation reserve systems in Australia, and contains the Nattai and Kanangra-Boyd Wilderness Areas.

The Warragamba Special Area contains a highly diverse range of native plants and relatively intact habitat areas. Of particular significance, the remaining portion of the Warragamba Special Area that is to be transferred contains some vegetation communities that are inadequately protected, such as Porphyry Box Woodland. This particular vegetation community is of high conservation priority because it is highly fragmented and its survival is under threat from clearing.

The O'Hares Creek Special Area contains a highly diverse array of intact and undisturbed vegetation communities and habitats, which supports great species richness. The transfer and reservation of this area will protect vegetation communities of high conservation value, such as Woronora Upland Swamp. This special area also contains a number of Aboriginal sites, and has been included on the Register of the National Estate. In particular, the inclusion of this area within the national park estate will improve the long-term viability of regional biodiversity.

Catchment management is about the effective coordination of the management of ecological and natural resource management issues. It is therefore this Government's intention that both the National Parks and Wildlife Service and the Sydney Catchment Authority will jointly manage the special area lands. Joint management will ensure that both the Service's specialist skills in ecosystem management and biodiversity protection, and the Authority's specialist skills in the management of water supply catchments, will be utilised in the management of these areas.

It is in fact a current requirement of the *Sydney Water Catchment Management Act* that both the Service and the Authority must, as joint sponsors, prepare a plan of management for any lands that are declared as a special area.

The Special Areas Strategic Plan of Management is one such plan that has been prepared under this Act. It applies to a number of special areas, including some of the areas that are to be transferred. An integral part of this plan is a Joint Management Agreement, which determines the joint management arrangements and the individual responsibilities of both the Service and the Authority for the lands to which this plan applies.

The Sydney Catchment Authority currently owns the majority of the land within the special areas that is to be transferred. The Authority, however, will not be required to transfer the entirety of special area lands currently under its control. Lands within the special areas that are required by either the Authority or Sydney Water Corporation to operate and meet their respective water supply functions will form an "operating envelope" and will not be transferred. It is anticipated, for example, that the operating envelope will contain major infrastructure, such as water storages, dams and associated infrastructure.

An in-principle agreement between the Authority and the Service has already been reached to fund the management of the transferred special areas lands. The Authority will provide the Service with an annual grant of \$2.73 million, which is referred to in the service agreement between the two agencies. The House will recall that one of the purposes of the recent *Sydney Water Catchment Management Amendment Bill* was to authorise the making of these annual grants.

With respect to the actual transfer of special area lands, both the Authority and the Service have prepared an indicative timetable to transfer the special areas lands that were subject to my determination.

It is anticipated that parts of the Warragamba Special Area may be transferred as early as December this year, with the remainder proposed to be transferred by May 2002. The Blue Mountains Special Areas, which encompass the Katoomba and Blackheath



Special Areas, are proposed to be transferred by April 2002, and the O'Hares Creek and the portion of the Shoalhaven Special Area identified for transfer, are proposed to be transferred by June 2002.

Turning now to the specific legislative amendments proposed in this Bill.

This is essentially an enabling Bill to facilitate the future funding and joint management of these transferred special area lands. Amendments of an administrative nature are proposed to both the *National Parks and Wildlife Act 1974* and the *Sydney Water Catchment Management Act 1998*.

I will speak firstly about the amendments to the *National Parks and Wildlife Act*.

As I have already said, the Sydney Catchment Authority is to fund the National Parks and Wildlife Service to manage the transferred special areas. The amendments proposed in this Bill will ensure that the National Parks and Wildlife Fund is able to receive payments from the Sydney Catchment Authority, and pay moneys from that Fund, for the implementation of special area plans of management.

Although major operational infrastructure required by the Sydney Catchment Authority and the Sydney Water Corporation will be included in an operating envelope, which is not to be transferred, some minor infrastructure such as weather stations, rainwater gauges and survey markers will likely be included in the areas to be transferred. The water authority's existing interests in relation to such infrastructure will be protected to enable its operation within a transferred special area that is reserved or dedicated under the *National Parks and Wildlife Act*.

However, the amendment also creates the power for myself, as Minister for the Environment, to grant a lease, licence or easement to enable a water authority to exercise its functions where necessary within a park or reserve that is also a special area. It is my intention that any lease, licence or easement granted to a water authority would be for nominal consideration. These interests may only be granted subject to their identification in the relevant reserve's plan of management.

Specifically, the plan of management will need to identify the affected lands as well as the purpose, term and person to whom the interest is to be granted. The intent is to ensure the permissibility of a water authority's functions, for example where an existing interest ceases or is modified, or where new minor operational infrastructure is required.

Further, the identification of a proposed activity in a plan of management enables its public exhibition and ensures the public can comment.

I would like to assure the Honourable Members that environmental safeguards will apply where a water authority may need to alter its existing operating infrastructure or establish new minor operational infrastructure.

Where a water authority, as a proponent, needs to undertake new works on lands reserved or dedicated under the *National Parks and Wildlife Act*, I am obliged as the determining authority to apply Part 5 of the *Environmental Planning and Assessment Act 1979* in the consent process.

Turning to the proposed amendments to the *Sydney Water Catchment Management Act 1998*.

I have referred to the fact that under the *Sydney Water Catchment Management Act*, the Director-General of National Parks and Wildlife is the joint sponsor of special area plans of management required under this Act. The amendments will ensure that as joint sponsor, the Director-General of National Parks and Wildlife also has the power to jointly implement a special areas plan of management.

I would like to reiterate that the benefit of this joint management is that it brings together the skills of the joint sponsors to ensure the protection of ecological health and water quality in our catchments.

From time to time it will also be necessary for the joint sponsors to engage contractors or other government agencies to assist them in the implementation of a special areas plan of management, and the proposed amendment will create the power to enable this.

This is a necessary and sensible Bill, which will enable the transfer of a number of special area lands for their addition into the national park estate. This Bill will benefit many sectors within the community by ensuring that our catchments and water quality are adequately managed and protected by both the Sydney Catchment Authority and the National Parks and Wildlife Service.

The fundamental result of both this Bill and the transfer of these special areas will be positive for the protection of both our drinking water quality and biodiversity, and for the expansion of our system of protected areas in New South Wales.

I commend the Bill to the House.

**The Hon. RICHARD JONES** [5.37 p.m.]: The bill amends the National Parks and Wildlife Act to allow the National Parks and Wildlife Fund to receive payments from the Sydney Catchment Authority, for money to be paid from the fund for the management of special areas transferred from the SCA to the National Parks and Wildlife Service [NPWS], and to enable the Minister for the Environment to grant licences, easements and rights of way over special area lands. It will also amend the Sydney Water Catchment Management Act 1998 to enable the Director-General of the National Parks and Wildlife Service to implement management plans for special areas and enable the SCA and the director-general to engage contractors to assist in planning the implementation.

Special areas are tracts of unspoiled bushland surrounding the water storages for the greater Sydney, Blue Mountains and Illawarra regions that protect our catchments and water quality. The McClellan report on the Sydney water inquiry recommended that these special areas be declared as national parks or nature reserves. The National Parks and Wildlife Service manages them for water quality and broader ecological considerations. As a result, the Minister for the Environment reviewed the areas and determined that the objectives of the SCA would be more effectively attained if the land within the Warragamba, Katoomba, Blackheath, Woodford, O'Hares Creek and part of Shoalhaven special areas were transferred to the National Parks and Wildlife Service. Some 40,000 hectares will now be added to the Blue Mountains and Kanangra Boyd national parks.

The special areas will, however, be jointly managed by the SCA and the NPWS. Lands required by either the SCA or the Sydney Water Corporation to operate and meet their water supply functions—such as those containing water storages, dams and associated infrastructure—will not be transferred, and the SCA will provide the National Parks and Wildlife Service with an annual grant of \$2.73 million for the management of the transferred special area lands.

While the transfer of special areas in our water catchments to the management of the National Parks and Wildlife Service is a much-needed, sensible and positive step in ensuring that catchments and water quality are adequately protected, the environmental groups and I are concerned that the bill as it is currently drafted could allow leases, licences, easements or rights of way to be granted for purposes that could have significant detrimental impact on the values of national parks and other reserves in special areas—for example, leases, licences, easements or rights of way for new or raised dams, major infrastructure or groundwater extraction. Admittedly, the Minister for the Environment indicated in his second reading speech that such leases, licences, easements and rights of way are merely intended to enable water authorities to exercise their functions in relation to minor infrastructure such as weather stations, rainwater gauges and survey markers within parks and reserves that are also special areas.

The provisions in the bill, however, in no way limit the purposes for which a lease, licence, easement or right of way can be granted to the use or maintenance of minor infrastructure. In fact, no restriction whatsoever is placed on the purposes for which a lease, licence, easement or right of way can be granted. As a result, leases, licences, easements or rights of way could be granted for purposes that would have significant detrimental impact on the values of national parks and other reserves in special areas. I will therefore move amendments in Committee that ensure that leases, licences, easements or rights of way cannot authorise impoundment and flood mitigation structures, inundation, water extraction from groundwater and natural water bodies, major building or works, or works that cause major harm to the environment. The amendments will also define "minor infrastructure" as that which would result in zero or minimal environmental harm and does not include new or enlarged pipelines and power lines, sewage treatment plants, pumps, permanent accommodation, large towers and new or enlarged roads. I urge all honourable members to support the amendments.

**The Hon. JOHN RYAN** [5.41 p.m.]: The Opposition does not oppose the bill. It largely implements a proposal that was initiated by Mr McClellan's report into the Sydney water contamination crisis. Essentially, the plan proposed in this bill has been envisaged for some time. Originally the land that is under consideration and appears on the map outlining areas affected by this bill was under the control of Sydney Water. The land then passed to the Sydney Catchment Management Authority. Finally, a scheme of arrangement will be implemented and these areas, many of which are very high conservation areas indeed, will be managed by the Director-General of the National Parks and Wildlife Service with funds that have been collected by the Sydney Catchment Management Authority and passed across to the NPWS for the purpose of funding that management. The Opposition does not disagree with that particular scheme in general. The Opposition's concerns, outlined by the shadow Minister, the honourable member for Southern Highlands in another place, related to community consultation.

There has not been much evidence of consultation with local government authorities or with tourist operators that operate from the Yerranderie area. That is an area that I knew in my youth and where I went bushwalking. I believe that these days one can be flown there for a daytime picnic. It is obviously a good business which introduces people who may not have a lot of time to spare to the natural environment. Yerranderie is certainly a wonderful place to visit. I commend it to honourable members who have the time to take that trip or to bushwalk in the area. They would see the ghost town of Yerranderie. I believe it was originally settled during the gold rush and, from memory, there used to be gold and silver mining in the area. Although it was probably not environmentally sound, I recall putting a few lucky pieces of rock in my knapsack when I was about 12 years old or so, in the hope that I might have collected some gold. In any event, the unique beauty of the Yerranderie area is certainly worth experiencing.

The Opposition is concerned that there has been little consultation with the tourist operators, particularly in respect of land located close by that is privately held, to ensure that the plan of management that is implemented by the National Parks and Wildlife Service using these funds is compatible with the continuation of that operation. The local councils also expressed concern about how these areas would be maintained. They are concerned about the control of feral pests and introduced plant species, such as serrated tussock and Paterson's curse. They are concerned to ensure that adequate resources are diverted to the control of plants that are not only an introduced species and a blight on the natural environment, but also present a significant threat to pastoralists and land-holders who are trying to involve themselves in the agricultural industry close by.

It is important to understand that this catchment does not merely conserve the precious resource of water for Sydney; it is an area of land situated in close proximity to places such as Wollondilly. People in Wollondilly also regard it as part of their neighbourhood. It is necessary to maintain these areas of land, compatible with the nearby neighbours. Everyone understands what is involved in dealing with the catchment authority or dealing with the NPWS, but might be concerned about this hybrid organisation where all care might be taken but no specific responsibility is to be sheeted home to either the NPWS or the catchment authority. If there are matters in dispute, the parks service will argue that the land is owned by the authority, and the authority will say that it is managed by the parks service.

Bushfire control is another important aspect of management and a particularly contentious issue in this area. The threat of bushfire has to be balanced against the requirements of management of Sydney's water catchment. I think that is understood, but as yet we have not had the chance to see the detail of how this new scheme will work. The impression given by the Minister in the other place was that we can expect the existing arrangement to continue unaltered. In my opinion, some people might be concerned if it continues, given that existing problems need to be addressed. In the area in which I live at Narellan, one of the parcels of land involved is O'Hares Creek. It is well known in the Campbelltown area as a place in which a koala colony might have been sighted, which would make it the closest koala colony to suburban Sydney. That has attracted enormous interest, but the area is generally valued by those who live in Campbelltown as a credit to the district.

I am not sure that people have had the opportunity to see koalas in the wild. In most instances their presence has been detected more by the evidence they leave behind than by actual sightings of them in trees. Nevertheless, the areas in question are valued by those who live nearby, for all kinds of reasons—as Sydney's catchment, someone's playground, someone's neighbourhood. They will need to be managed in such a way that the particular needs of the user groups or neighbours receive equal consideration. The Coalition does not oppose the bill because, essentially, it implements the McClellan report. The Opposition supports absolutely the recommendations made by Mr McClellan, given that they go to such an important issue: the safety of Sydney's water. I understand that the House will not resolve itself into Committee now. I know that amendments have been foreshadowed, but the Opposition has not had an opportunity to consider them, let alone consult other interested groups that may have wanted to comment on them. In general, the Opposition does not see any reason why this bill should not proceed to a second reading.

**The Hon. IAN COHEN** [5.50 p.m.]: The Greens have serious concerns about the National Parks and Wildlife (Special Areas) Bill. We understand that the Government has responded to some of these concerns and will agree to some of the amendments proposed by environment groups represented by a number of members in this House. The bill facilitates the transfer of important parts of the Sydney water catchment to the status of reserved areas under the National Parks and Wildlife Act. The Greens recognise that these areas are important for the protection of Sydney's drinking water. As well as the vitally important role of this land in providing clean drinking water for much of the Sydney metropolitan area, the land is also important for the biodiversity and wilderness within it.

We therefore support the transfer of the land to reserve status under the National Parks and Wildlife Act with special management arrangements to ensure both catchment protection and expert conservation management for biodiversity. Clean water is a basic building block of the success of our society. I am reminded of a book called *We All Live Downstream*, written by Pat Costner, Glenna Booth and Holly Gettings. Soil disturbance, effluent inflow, and stormwater run-off can have a cumulative effect downstream. People in the city have the convenience of turning on a tap and do not relate to exactly where the water comes from. Nevertheless, there is impact all the way through the system. That is why it is vital to maintain water catchments in as near pristine condition as possible.

During the cryptosporidium scare of some seasons ago there was a lot of talk about dead animals in creeks in the catchments and where the problem evolved from. It is in the interests of all society to protect

catchments. It is reasonable that the National Parks and Wildlife Service have a pre-eminent role in dealing with our basic survival mechanism, clean water and a healthy water catchment around Sydney. The major problem with the bill is that there is insufficient recognition of the need to ensure that the areas are primarily managed for their conservation and wilderness values. It leaves open the possibility that activities could take place which would seriously compromise the integrity of these areas. The bill in its present form could allow a lease, licence, easement or right of way to be granted for purposes such as a new or raised dam, major infrastructure or groundwater extraction. The purposes for which such leases, licences or easements could be granted are not sufficiently detailed in the bill. The bill also leaves open the possibility that land could be leased to facilitate activities unrelated to the provision of water supply. Inappropriate commercial pressure may be placed on the National Parks and Wildlife Service and the Sydney Catchment Authority, which will jointly manage these lands.

There are many instances of the commercialisation of national parks. Adventure sports and the increased numbers of people moving through the areas can have an impact. Sensitive areas such as these can be used in a very sensitive way but, unfortunately, most people simply are not properly toilet trained in this regard. It is a real tragedy when people in national parks do not know how to look after the area sufficiently to guarantee the integrity of water supplies in the catchment. National parks are there for conservation and public use, but in certain circumstances it would be more appropriate for these areas to be treated more like nature reserves, which have a higher conservation standard—scientific purposes, and protection of the flora and fauna communities—rather than primarily as a recreation area for the public. We want people to appreciate national parks. There is great value in people, particularly young people, enjoying the beauty of nature and recreation in national parks. There are physical benefits and people have the opportunity to perceive something different when all too often their reality is restricted by habitation in alienated city environments.

It is essential that there is sufficient statutory protection for these areas. I understand that the Government will support the Greens amendment. I urge the House to support all the amendments proposed by the environment groups, which will be moved by the Hon. Dr Arthur Chesterfield-Evans and the Hon. Richard Jones in Committee. I understand that the bill will be dealt with in Committee after the break. I hope that this will give sufficient time for appropriate consultation and discussion on the matter. It may be a little off the track, but I am reminded about why Rome declined—lead in the water supply. Similarly, our society could suffer if our water supply is not pristine. In this highly technological society, with a growing population and efficient means of transport, off-road vehicles—including off-road motorbikes and the like—can impact on national parks and water catchment areas. It is essential that the Government takes a firm stand to protect the pristine qualities of these areas so that we continue to have a water supply of high standard. The Greens are happy to support the bill and hope that the amendments are properly considered.

**Reverend the Hon. FRED NILE** [5.57 p.m.]: The Christian Democratic Party supports the National Parks and Wildlife Amendment (Transfer of Special Areas) Bill. Any legislation that helps to guarantee the water supply for the people of Sydney and neighbouring areas is important, particularly after the past concerns about water supplies. This bill follows the decision by the Minister for the Environment to undertake a review of all land that has been classified as a special area under the Sydney Water Catchment Management Act 1998. On 29 June 2001 the Minister determined that the objectives of the Sydney Catchment Authority [SCA] would be more effectively attained if the land within the Warragamba, Blue Mountains—Katoomba-Blackheath—Woodford, O'Hare's Creek and part of the Shoalhaven special areas lands were vested in the Minister administering the National Parks and Wildlife Act 1974. This fits in with the recommendations made in Peter McClellan's 1998 Sydney water inquiry report. For that reason we support the bill.

The bill will amend the National Parks and Wildlife Act to enable money to be paid into and out of the National Parks and Wildlife Fund in connection with the implementation of plans of management adopted under the Sydney Water Catchment Management Act for special areas under that Act. It will also amend the National Parks and Wildlife Act to enable the Minister for the Environment to grant leases, licences, easements and rights of way over lands reserved or dedicated under the Act as special areas under the Sydney Water Catchment Management Act or the Hunter Water Act 1991 so that the Sydney Catchment Authority, Sydney Water Corporation or Hunter Water Corporation may exercise their functions in relation to the lands concerned. It also amends the Sydney Water Catchment Management Act to enable the Director-General of the National Parks and Wildlife Service to implement plans of management adopted for special areas under the Act. It will amend the Sydney Water Catchment Management Act to enable the director-general and the Sydney Catchment Authority to engage contractors, including government agencies, to assist them in such implementation and make other minor amendments. We support the bill and will reserve our response to the amendments until the Committee stage.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [6.00 p.m.]: The Australian Democrats support the National Parks and Wildlife Amendment (Transfer of Special Areas) Bill. The bill transfers the management of lands surrounding water storage areas from the Sydney Catchment Authority to the National Parks and Wildlife Service [NPWS] as part of the Sydney Water Catchment Management Amendment Act, which was debated earlier this year. As I have said previously, the Australian Democrats support the NPWS taking over the management of areas within catchment areas that are critical to the integrity of clean water for Sydney. In addition to lands already transferred to the NPWS, in his second reading speech the Minister said that designated land within the Warragamba, Katoomba, Blackheath, Woodford, O'Hares Creek and parts of the Shoalhaven special areas would come under the control of the NPWS.

An additional 40,000 hectares will be added to the Kanangra Boyd and Blue Mountains national parks. That is a substantial increase in the amount of land currently under the management of the NPWS. The bill provides for the transfer of \$2.73 million per annum, indexed, which equates to \$70 per hectare. That is roughly twice the amount currently provided by the State to the NPWS to manage each hectare of national park. Sufficient money will be provided to maintain the land in the interests of good catchment. The Australian Democrats are concerned about some aspects of the bill. The Environment Liaison Office, a lobbying body representing five peak environmental groups, has expressed reservations about the bill. Its letter of 8 November stated:

The bill in its present form could allow a lease, licence, easement or right of way to be granted in circumstances where this would have a significant impact on the values of national parks and other reserves in the special areas. Examples include new or raised dam, major infrastructure, or groundwater extraction. Furthermore the purposes for which a lease, licence, easement or right of way could be granted are unrestricted.

Section 153B of the Act will allow the Minister for the Environment to grant leases, licences, easements and rights of way to exercise its functions, and gives the Minister a discretion to determine the terms and conditions of access. It may sound slightly pedantic, but I feel there should be more specification about the intention of this section. This is important because misuse or haphazard planning of infrastructure could affect the safety of our water, or the catchment area itself. A register of leases, licences, easements or rights of way granted under this section should also be made available to the public. Honourable members may recall that some months ago I asked a question in the House about a database of government land. It turned out that such a database was being compiled and that it was for sale, because the Government is liquidating some of its assets—to use management jargon for flogging off the farm. We have to make sure that that database of public land is available on the Internet. It should be available to people who not only want to sell land but also want to conserve land or look at the overall assets of the State in terms of the public interest.

I am pleased that the Government has indicated that it will support my proposed amendment to establish such a register. Presumably the register would be a subsection of that larger register of government land. I have given the Minister notice of a foreshadowed amendment suggested by environmental groups that provides that the period of leases, licences, easements or rights of way must not exceed 10 years. The Minister replied that, with water infrastructure, that is far too short a period, but that the granting of leases and easements should not be indefinite, but should be reviewed periodically. We will work towards a compromise so that the leases for long-term structures do not need to be reviewed frequently. Those of a transient nature will be reviewed more quickly. We must negotiate a way of distinguishing between the two and with goodwill that will be done, hopefully before we get to the Committee stage of the bill in a couple of weeks time. In general, the Australian Democrats support these land transfers and are pleased that they will be adequately funded. With those caveats, we have no problem with the bill.

**The Hon. Dr PETER WONG** [6.05 p.m.]: The Unity Party supports the National Parks and Wildlife Amendment (Transfer of Special Areas) Bill. This sensible legislation will enable the National Parks and Wildlife Service to have joint management with the Sydney Water Corporation of special areas surrounding water storage areas. That is consistent with the McClellan Sydney Water inquiry recommendations. It is perfectly logical that if those special areas have ecological significance as well as importance for water catchment, they should be jointly managed by both government authorities. I share some of the concerns expressed by the Opposition in the lower House that some details about the land proposed to be transferred have not been made readily available. That is likely to cause some concern to local organisations that may be affected. I note that the bill provides for money to be paid into and out of the National Parks and Wildlife Fund to implement plans of management adopted under the Sydney Water Catchment Act 1998. Let us hope that no resources currently earmarked for national parks end up being diverted to water catchment management. Stranger things have happened, but I trust not in this case.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [6.06 p.m.], in reply: I thank the Hon. Richard

Jones, the Hon. John Ryan, the Hon. Ian Cohen, Reverend the Hon. Fred Nile, the Hon. Dr Arthur Chesterfield-Evans and the Hon. Dr Peter Wong for their contributions to the debate. As a number of honourable members have said, various amendments have been proposed by the crossbench members. The Government will take the bill into Committee at this stage, but it will carefully consider the amendments. In the main the Government is sympathetic to most of the proposed amendments and a formal response will be provided by the end of this week. I will not canvass all the issues now, because the appropriate way to do that is through further discussion with crossbench members who have proposed amendments, and with other crossbench members who have an interest in this area. Those matters will be dealt with at the Committee stage. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

## **JUSTICE LEGISLATION AMENDMENT (NON-ASSOCIATION AND PLACE RESTRICTION) BILL**

### **Second Reading**

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [6.08 p.m.]: I move:

That this bill be now read a second time.

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

### **Leave granted.**

This bill is a cornerstone of the Carr Government's comprehensive anti-gang package, which was announced by the Premier on 4 September.

I am pleased that two parts of that package have already been passed by the Parliament.

The *Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001* commenced on 1 October. That Act imposes a maximum sentence of life imprisonment for gang rapists, in recognition of the seriousness with which all sections of the community regard their terrible crimes.

The *Police Powers (Vehicles) Amendment Act 2001* was passed on 16 October. This Act gives police additional powers to stop vehicles reasonably suspected of having been used in connection with an indictable offence, and to ask all persons in the vehicle to provide information about their identities.

On 17 October, the Attorney General introduced the *Crimes Amendment (Gang and Vehicle Related Offences) Bill*. That bill: introduces higher penalties for committing certain gang-related offences in company; reforms kidnapping laws; creates a new offence of car jacking; creates a new offence of threatening potential witnesses to prevent them from giving evidence; creates a new offence of recruiting children to commit a serious indictable offence; and creates new offences targeted at gang and other organised criminal involvement in car rebirthing.

The Minister for Fair Trading has introduced legislation amending the *Motor Dealers Act* and *Motor Vehicle Repairs Act* to further clamp down on gangs and other criminals who engage in organised motor vehicle theft.

The bill I bring before the House today complements these other important reforms, in that it targets the elements that are central to gang activity.

The 1995 United States Federal Bureau of Justice Assistance *Youth Gang Survey* recognised that gangs generally have a number of common characteristics, two of the most important being ongoing criminal association in a group, and identification with a particular territory or "turf".

This bill focuses on breaking down an offender's association with persons and places that increase the likelihood of their reoffending.

The bill establishes non-association orders, which prevent the subject of such an order from associating with specified persons. It also provides for place restriction orders, which prevent the subject of such an order attending a particular place or area.

Non-association orders may be used to prevent a gang member from associating with other gang members. Place restriction orders target "turf" and, by extension, can also target gang associations.

The Carr Government has developed this bill, having regard to the success of the police drug bail scheme being trialled in Cabramatta. The Government has also considered the New Zealand *Criminal Justice Amendment Act 1989*, formerly the *Disorderly Assemblies and Restrictions on Association Bill*, which was incorporated into New Zealand's *Criminal Justice Act 1985*.

That Act provided for non-association orders to be made at sentencing. The bill before the House today builds on the successful New Zealand model, making a number of improvements to better suit the needs of New South Wales. In addition, this bill also makes provision for the introduction of place restriction orders.

It is important that these powerful new orders are not used to interfere with legitimate associations or to prevent ordinary law abiding citizens from enjoying full access to the places they are entitled to attend.

For this reason, these orders will be linked to defined stages of the criminal justice process. They will not be used in respect to persons who have not been charged with or convicted of criminal offences.

The Government realises the importance of independent monitoring and review of this legislation. Clause 5 of the bill requires the Ombudsman to monitor the Act for two years and to report on its operation.

I will now address the key provisions of the bill.

Schedule 1 of the bill amends the *Crimes (Sentencing Procedure) Act 1999* and *Children (Criminal Proceedings) Act 1987* to establish non-association and place restriction orders as a new form of sentence.

The court, depending on the circumstances of the case, may impose one of two kinds of non-association order. The first kind of order, a limited non-association order, prevents the offender from having physical contact with a specified person or persons.

However, limited non-association orders may not be sufficient in all cases. We live in a world where criminals coordinate their criminal activity using a range of means, such as telephones and email. Gang members frequently use mobile phones to communicate with each other and to plan their crimes. Therefore the court, where it believes appropriate, will also be able to make an unlimited non-association order, which prevents the offender from communicating with a specified person or persons by any means.

Non-association and place restriction orders can be imposed by the court where it believes it is reasonably necessary to ensure the offender does not commit further offences. This makes it clear that the aim of such orders is to prevent crime and to assist the rehabilitation of the offender by severing their ties with people or places that make them more likely to engage in criminal activity.

Breach of these orders needs to be taken seriously, if they are to successfully deter offenders from inappropriate associations or access to places. The New Zealand legislation on which the bill is partially modelled recognised that breach of such an order should itself be a minor criminal offence. This bill takes the same approach. The proposed section 100e of the *Crimes (Sentencing Procedure) Act* creates a criminal offence where an order is contravened without reasonable excuse. The penalty for such an offence is a maximum of six months imprisonment and/or a fine of \$1,100.

The new section 100E does not provide an exhaustive list of what constitutes a reasonable excuse. This is ultimately a matter for the courts to consider on a case by case basis. However, it does recognise that an offender who has unintentional contact with a person with whom they are not to associate, and who immediately terminates that contact, does not contravene a non-association order.

The new section 17a(4) of the *Crimes (Sentencing Procedure) Act* makes it clear that non-association and place restriction orders may be made in addition to, but not instead of, other sentencing options.

This gives courts increased flexibility in sentencing. For example, courts will be able to impose a non-association order with a community service order, a fine, or a periodic detention order.

This approach prevents the new orders being used as an alternative to stronger sentences. If this approach were not taken, some courts might use the new orders to water down the sentences they would have otherwise imposed.

For the same reason, the new orders will not be able to be made where the charges are dismissed at sentence, where an offender is dealt with under the *Young Offenders Act 1997*, or where final sentence is deferred pursuant to a Griffith's bond under section 11 of the *Crimes (Sentencing Procedure) Act*.

Non-association and place restriction orders may only be made for offences punishable by six or more months imprisonment, as it would be inequitable for the punishment for the breach of the order to exceed the penalty for the offence to which the order attaches. Limiting the application of the orders to offences carrying imprisonment for 6 months or more will also ensure that the orders are not used in connection with minor summary offences such as offensive language.

The Government recognises that an offender's personal circumstances will change over time and that non-association and place restriction orders made at sentencing should not have an indefinite life, particularly as criminal penalties attach to breach of an order. As is the case in New Zealand, the bill enables the court to set the period for such an order, with that period not to exceed one year.

These orders are meant to operate whilst an offender is in the community. Accordingly, the new section 100D of the *Crimes (Sentencing Procedure) Act* provides that an order is suspended whilst an offender is in custody or on escorted leave from custody. This means that an offender who receives a non-association order for one year, concurrent with a sentence of imprisonment for six months, will be subject to the order for the six months after their release from prison.

The new section 100A of the *Crimes (Sentencing Procedure) Act* recognises that non-association and place restriction orders should not be imposed where the burden of such an order would be unreasonable and frustrate the offender's reintegration into the community. Therefore the bill does not allow non-association orders to be made to prevent an offender from associating with members of their close family. Place restriction orders cannot be made to prevent a person from attending a place which, at the

time the order is made, includes their home, the home of a close family member, a place of work at which the offender is regularly employed, an educational institution at which the offender is enrolled, or a place of worship regularly attended by the offender.

The new section 100B of the *Crimes (Sentencing Procedure) Act* requires the court to explain to the offender his or her obligations under the order and the consequences of breaching the order.

Schedule 1.2 of the bill amends the *Criminal Appeal Act 1912* to make it clear that a non-association or place restriction order can be appealed in the same manner as any other sentence.

In New Zealand, some commentators have suggested that the lodging of an appeal can be used to frustrate a non-association order, as the order will generally be suspended pending resolution of the appeal. Therefore the time taken to finalise the appeal will shorten the length of the order. In some cases, it may render the order completely ineffective.

The new section 100C of the *Crimes (Sentencing Procedure) Act* counters this by providing that if an appeal is lodged and dismissed, the order commences running from the date of the appeal being dismissed, not the date of sentence.

The new section 100F of the *Crimes (Sentencing Procedure) Act* provides that a court that sentences an offender for a new offence, whilst the offender is subject to a non-association or place restriction order, may vary or revoke that order. This gives the court maximum flexibility. It can change an order that is no longer appropriate, as well as impose a further order in respect of the new offence.

The new section 100G of the *Crimes (Sentencing Procedure) Act* recognises that an offender's circumstances may change during the life of a non-association or place restriction order. For example, an offender's mother may move to an area that they may not go to under a place restriction order. The bill allows offenders to apply to the local court for the variation or revocation of an order that is no longer appropriate. The court will not grant leave to make such an application unless it is satisfied that, having regard to the offender's changed circumstances, it is in the interests of justice to hear the application. The local court may refuse to entertain applications it believes are frivolous or vexatious.

A local court magistrate may vary or revoke orders made by a higher court. In doing this, the magistrate is not reviewing the order of a higher court, which was appropriate at the time it was made, but is considering whether the order remains relevant in light of matters that have subsequently arisen. A similar arrangement exists at section 114 of the *Crimes (Administration of Sentences) Act 1999*, where a local court may consider changed circumstances in extending the period of a community service order imposed by a higher court.

The Commissioner of Police has the right to appear in support of, or opposition to, any application for variation or revocation of a non-association or place restriction order.

The new section 100H of the *Crimes (Sentencing Procedure) Act* is a key provision of the bill. Persons named in non-association orders, other than the offender, may not themselves be currently before the courts for a criminal offence. Any publication of their name in open court may result in inappropriate adverse inferences being drawn against them. The new section 100H therefore makes it an offence to publish the name of such a person, or any information calculated to identify them. The offence carries a maximum penalty of \$1,100. Section 100H does not prevent the publication of the person's name to the offender, any person named in the order, the bodies responsible for administering the order or the accompanying sentence, the police service, any person involved in proceedings for the breach of an order, any other person approved by the court, or any person to whom such information is required to be disclosed under any law.

The bill does not only provide for non-association and place restriction orders to be made at sentencing. It amends relevant legislation to specifically recognise that non-association and place restriction conditions may be attached to bail, unescorted leave from custody, conditions of home detention imposed by the Parole Board upon revocation of periodic detention, and parole. Most of these provisions are in schedule 2 to the bill.

Non-association and place restriction conditions may already be imposed under the general condition making powers that attach to bail, leave, parole, and revocation of periodic detention.

Police officers have recently begun to use the general condition making powers of the *Bail Act 1978* to attach place restriction conditions to police bail. From 1 July to 26 September 2001, under the new police drug bail scheme in Cabramatta, the region target action group and local police imposed place restriction conditions of bail on 144 persons, ordering that they not return to Cabramatta.

Express legislative recognition of non-association and place restriction conditions will require bodies with bail, parole and leave management responsibilities to specifically consider the appropriateness of such orders, thereby promoting their further use.

The amendments at schedule 2.1 of the bill give legislative recognition to non-association and place restriction conditions of bail and make consequential amendments to the *Bail Act*. Importantly, the new section 36C of the *Bail Act* prohibits the publication of the identity of persons named in non-association bail conditions, other than the identity of the accused. There is currently no such protection for non-association conditions imposed under the general bail condition making powers of the *Bail Act*.

Schedule 2.2[1] will encourage the department of corrective services to consider the appropriateness of attaching non-association and place restriction conditions to leave permits authorising unescorted leave. Schedule 2.3 contains similar arrangements in respect to leave granted to juvenile detainees by the department of juvenile justice.

There is no need to create new provisions to protect the identity of persons named in non-association conditions of leave, given the existing disclosure provisions of the *Crimes (Administration of Sentences) Act 1999* and *Children (Detention Centres) Act 1987*.



The *Crimes (Administration of Sentences) Regulation 2001* already explicitly recognises that parole officers may attach non-association or place restriction conditions to parole. Parole officers are currently using these powers.

The bill extends the specific recognition of non-association and place restriction parole conditions to parole determined by the sentencing court, Parole Board and Children's Court.

The new section 51A of the *Crimes (Sentencing Procedure) Act*, at schedule 1.1 to the bill, recognises that the sentencing court may impose non-association and place restriction conditions of parole. If these conditions are no longer appropriate when the offender is released, then the Parole Board or Children's Court may vary or revoke the conditions in accordance with section 128(2)(a) of the *Crimes (Administration of Sentences) Act*.

The new section 51B prevents the improper publication of the identity of a person named in a non-association condition of parole imposed by the court at sentencing.

The proposed new section 128A of the *Crimes (Administration of Sentences) Act* will mean the Parole Board explicitly considers the appropriateness of attaching non-association or place restriction conditions to parole.

The proposed new section 165A of that Act recognises the Parole Board may impose such conditions when ordering that a person subject to periodic detention enter into home detention.

The breach of a non-association or place restriction condition of bail, leave, parole or home detention will be treated in the same manner as the breach of any other condition attaching to those stages of the justice process.

This bill is supported by the New South Wales Police Service. It will target gangs, break down criminal associations, promote the rehabilitation of offenders, and assist in preventing crime. I commend this bill to the House.

**The Hon. GREG PEARCE** [6.09 p.m.]: I lead for the Opposition, which will not oppose the bill. Once again, at best this bill is a half-hearted attempt by the Government to do something to address crime and drug problems and other social problems that are rampant in this State. When introducing the bill in the other House the Parliamentary Secretary called it the cornerstone of the Carr Government's so-called comprehensive anti-gang package announced by the Premier on 4 September. He pointed out that amendments to the Motor Dealers Act and the Motor Vehicle Repairs Act would be part of the so-called clampdown. This State faces a lack of police resources, police management and police intelligence to deal with gang and drug problems, yet the Government has made no attempt to deal with the real issues leading to crime and the increase in crime. At no stage has it attempted to deal with the underresourcing and mismanagement of the Police Service. It has had 6½ long years to do something about this so-called gang-related activity, crime and drug problems that are deep and abiding in the community.

In 1999 the Carr Government made an election commitment to return 2,110 police to the front line by 2003. The Opposition has questioned that commitment and since that time the Government has abrogated its responsibilities on police numbers. Since the last election only an extra 191 front-line police have been provided. At the same time there has been an increase in drugs and gangs, and guns being brought into the country has become a significant community problem. The Premier's response was to link the gang problem with ethnic communities. Last year the Commissioner of Police, Mr Ryan, was quoted as saying that both he and the New South Wales Police Service were under attack on a range of issues, from problems at Cabramatta to the accuracy of crime statistics. In an article dealing with more than 50 pack rapes in south-western Sydney in eleven months by youths from Lebanese backgrounds he said it was a new and shocking phenomenon that was probably without precedent in Australian criminology. If that is the attitude of the Premier and the commissioner, it is no wonder that the debate on these issues has been diverted.

As I said in a recent debate on another of the so-called cornerstone package of bills, the Premier's record does not stack up. At the Australian Labor Party Conference in 1994 the Premier—he was then the Leader of the Opposition—made a great deal about fighting gangs in New South Wales. Members of his own party were disgusted at his attack on youth. Because they thought he was being too hard on youths members of the left-wing of the Australian Labor Party demonstrated their opposition to Mr Carr by wearing baseball caps backwards. It has taken until 2001 for the Premier to do anything to honour his promise to introduce legislation to deal with crime and gangs.

I have mentioned the disgraceful behaviour of the Premier when he went on radio several months ago in an attempt to present a tough image on crime. He drew a link between gangs, crime and ethnic communities. He then tried to shift the blame onto the Federal Government by referring to its immigration policies and suggesting that those policies allowed criminal elements into New South Wales. For the past three years, Australian-born and migrant residents of south-west Sydney have grown fearful of the rising level of violent crime in the streets. Since 1997, drive-by shootings, murders, gun battles and shootings of police officers have increased. Indeed, the New South Wales Crime Commission was well aware of gangs and the rise in gun violence, yet Mr Carr did nothing, even in the face of community outcry for action.

Unfortunately, this package of anti-gang legislation contains a number of measures to increase maximum penalties. The Opposition has already put on the record its concern that there is nothing in the Government's approach to demonstrate that increasing penalties will address the underlying causes of crime, gangs and other criminal activity, much less do anything about the drug problems of which we have heard so much and seen the results so often. The Government does not seem to think that the effectiveness and operation of the policies are relevant to its so-called package of reforms.

I have some concerns about the bill, which is supposedly aimed at preventing crime and assisting the rehabilitation of offenders by severing their ties with people or places that make them more likely to engage in criminal activity. That strategy may be long overdue but one questions whether it will work. By saying that I do not attempt to diminish the need for action. I merely remain to be convinced that this bill, in the absence of addressing the underresourcing and poor management of the Police Service, will achieve its aim. The concept of issuing orders to prevent people going to certain places or mixing with certain individuals raises significant questions about individual rights, and must be exercised with great caution. We must be careful about infringing an individual's liberty because the protection of liberty should be cherished.

I am gratified that the bill contains provisions that protect those rights and, indeed, section 100B is commendable because it requires a court, in making such an order, to explain to an offender the obligations that arise under the order and the consequences that may flow from a breach of the order. This is particularly important given that many offenders subject to these orders will be unrepresented. I am also concerned that magistrates may not necessarily have the requisite experience to deal with some of the delicate matters involved in varying orders.

I ask the Government to ensure that there are sufficient judicial officers in the Local Court with experience and knowledge to deal with these matters, particularly given the potential impact that an order may have on individual rights. Although I applaud them, I am concerned about the workability of the provisions designed to prevent the publication of the names of persons with whom the offender is ordered not to associate. Those persons may have no outstanding criminal charges against them, and it is important that we preserve the notion that a person is innocent until proven guilty. It will be interesting to see how those provisions develop and what the Ombudsman will say about them when he reports on the legislation.

I note that although this bill is part of the Government's anti-gang package it does not go anywhere near addressing the problems in Cabramatta. The Government has made no real commitment to providing the resources and management necessary to deal with drug and other underlying problems that lead to the criminal activity that is supposedly the focus of this legislation. I take this opportunity to congratulate the Federal Government and Prime Minister Howard, who emphasised in his policy speech the need for co-operation between police services and the ability of the Federal police to assist with these difficult national problems. I commend the Federal Government for its policy of intervening and ensuring better co-operation in this area. Unfortunately, the Treasurer does not appear to be blessed with the qualities he thought he had. I remind honourable members of the question I asked him three weeks ago after the Morgan poll predicted a landslide victory for Labor in Saturday's Federal election. The Treasurer responded:

I have always won a lot of money by following the conclusions of the Morgan poll rather than the Newspoll.

I express my heartfelt sympathy to the Treasurer on not having won the money or the election last Saturday.

**The Hon. IAN COHEN** [6.22 p.m.]: The Greens strongly oppose the Justice Legislation Amendment (Non-association and Place Restriction) Bill. The bill provides that when sentencing an individual for any offence that is punishable by imprisonment for six months or more, a court may make two new kinds of orders. The first is a non-association order that prohibits a person from associating with an individual or group for a specified period. The second is a place-restriction order that prohibits an offender from frequenting or visiting a place or district for a specified period.

Although the Government emphasised that the bill is a "cornerstone of the Carr Government's comprehensive anti-gang package", it goes much further than that. The bill does not confine itself to sentencing options for those who have committed gang-related offences. Non-association or place-restriction orders can be imposed upon a person found guilty of any offence that is punishable by imprisonment for six months or more. The bill could have devastating effects on some individuals and groups of people. Take for example teenagers—they could be male or female—who come from broken homes and who are regularly physically assaulted and verbally abused by their parents in the home. These teenagers still live at home and are unable to support themselves financially. They are unemployed and would love to leave home but cannot afford to do so.

Instead the teenagers spend time with their friends. They hang out together in groups in shopping malls, in parks and in a number of other public places. Their friends are the only thing that keeps them going: their home situation is appalling and they return home as little as possible. One day, desperate for money as they are not entitled to any government benefits and their parents refuse to give them any, they commit a home burglary—an offence that is punishable by imprisonment for more than six months. The sentencing judge issues a non-association order and a place-restriction order. They are ordered not to see their friends and, for 12 months, not to go to the shopping centre, the park and any of the other public places frequented by their friends.

The teenagers are devastated by these orders as they must now spend a great deal more time at home in abusive environments. They are unable to see their friends—their only lifeline—for 12 months. They have no idea how to make new friends. Under these circumstances, teenagers can become suicidal. The Greens believe that this bill will impact seriously on these types of individuals. It could lead to more suicides and the breach of orders by individuals desperate to see their friends.

Indigenous people, particularly young indigenous people, will also be impacted by the bill. For cultural, social and economic reasons, many young indigenous people hang out in public places with their friends and extended family. Non-association and place-restriction orders could be equally devastating for young indigenous people who spend virtually all their time hanging out with their friends and extended family. As the Law Society points out, while close family members are excluded from the orders, non-close family such as cousins and distant relatives can be included. It is well known that many indigenous people spend a lot of time with members of their immediate and distant family—everyone is an aunt or an uncle. In country areas, if the immediate family is unable to look after a child, adolescent or teenager properly, distant relatives draw them into the family and care for them.

A non-association order or place-restriction order may wreck a young indigenous person's life. It could make them depressed and suicidal—particularly teenagers who are going through a period in their lives when their peer group is most important to them. If that is taken away they could easily become suicidal. This is important. We were all young once and we remember what it was like to be desperate to be part of a group. Sometimes that group was not a good influence. When I was about 15 I desperately wanted to hang out with a group of violent people—I certainly grew out of that phase quickly. However, this sort of thing happens to many young people and we must recognise the meaning and importance of their peer groups.

**The Hon. John Ryan:** This is a confession.

**The Hon. IAN COHEN:** Certainly. I find the lack of awareness of the pressures on young people, particularly those from disadvantaged backgrounds, absolutely appalling. The Government is far removed from the pressures that can be applied in those circumstances, which are often compounded by the pressures that governments exert on families, which are manifested in drug and gambling problems and alcohol abuse. Such pressures are part of young people's lives. In many cases they have not brought these problems on themselves but they are the victims of family and societal dysfunction. The Government is now seeking to deny young people their only lifeline simply because it is looking for a law and order leg-up in an attempt to win more votes.

**The Hon. Carmel Tebbutt:** Non-association orders already exist.

**The Hon. IAN COHEN:** Then what is the point of this legislation? It is a sentencing option, but does that make it any better or any more reasonable? Such orders are not appropriate. The bill fails to address the gang issue in a meaningful way. It fails to encourage people in gangs to undertake meaningful things in their lives, such as employment, education and training opportunities. They are the only activities that are likely to coax and encourage individuals who hang out in gangs and commit crimes to try something else. If we are to create a void in people's lives by not allowing them to associate with their peers, we must give them an alternative. Instead of creating hope and alternatives, this bill will create despair and depression in many cases. There is already too much of that in this community. I believe that the Government has failed to appropriately approach the many and varied problems affecting adolescents and young people today. This legislation could be a disaster for them, and the Greens oppose it.

**Debate adjourned on motion by Reverend the Hon. Fred Nile.**

*[The Deputy-President (The Hon. Janelle Saffin) left the chair at 6.30 p.m. The House resumed at 8.15 p.m.]*

**CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT  
(PERMANENCY PLANNING) BILL (No 2)**

**Second Reading**

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.15 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated into *Hansard*. The speech is somewhat different from the Minister's second reading speech in the other place. In fact two speeches were delivered in that place. My second reading speech is a compilation of the Minister's comments on those occasions.

**Leave granted.**

The Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill (No 2) proposes amendments to the Children and Young Persons (Care and Protection) Act 1998.

These amendments will require the planning of suitable long-term placements in order to avoid the detrimental impact on children of failed attempts at restoration with birth parents, a drift in the care system and unplanned multiple placements.

This bill follows the tabling of a draft exposure bill last year, and extensive public consultation on the proposed reforms over the past 18 months.

The Minister said at the outset that she wished to actively promote debate about the issues, and challenge some of the prevailing thinking around child protection casework. The Government received many submissions following the release of the draft exposure bill and the subsequent issues paper.

Extensive community consultation has confirmed that there is broad agreement with the principle that permanency planning for abused and neglected children in out-of-home care needs greater focus.

However, it is evident that there is still a considerable amount of contention around the prospect of actively promoting adoption for children who cannot safely return to their birth parents.

Consequently, reflecting the consultation, this bill emphasises that adoption is only one of a range of possible long-term options for children in out-of-home care. It should be noted that it does not make consideration of adoption compulsory, nor does it extend the Children's Court's jurisdiction to allow it to make adoption orders. The Supreme Court will retain its jurisdiction for adoption.

The key provisions in the bill relate to long-term case planning for children in out-of-home care, including a definition of permanency planning, and requirements concerning the preparation of permanency plans for children in care.

The emphasis is on ensuring that children in the out-of-home care system are placed in a safe, nurturing, and stable home environment, which is able to meet their long term needs.

The Bill requires both the Children's Court and the Department of Community services to actively consider whether there is a realistic possibility of restoration to the child's birth parents, as a basis for making decisions about a child's future care arrangements.

While it is widely acknowledged that permanency planning is a central element of good child protection casework practice, there is simply no reference to it in our existing legislation.

This bill aims to provide clearer guidance for courts and child protection workers on this important issue, and to put some legislative checks and balances in place. It seeks to ensure that permanency planning is firmly on the agenda when decisions are made about a child's future.

Legislative reform is necessary to ensure that these crucial issues are properly addressed by decision makers. Of course, these proposed legislative amendments need to be supported and complemented by casework practice, information for magistrates and legal practitioners and other non-legislative measures. But legislation does provide the all-important foundation and framework for the development of sound policy and practice.

This bill proposes necessary reforms to rectify the unintended but detrimental consequences of our current practice for children in out-of-home care.

One of the problems that has contributed to a lack of permanency for children in care to date is the failure of courts and child protection professionals to squarely confront making a judgment as to whether a child will ever be able to return safely to his or her birth parents.

In too many cases this fundamental question is sidestepped, and the child ends up in a series of temporary placements. I understand that magistrates and caseworkers may shy away from making such a judgment if they can avoid it. While this is undoubtedly a significant responsibility, they are the only ones who are in a position to do it. A failure to squarely confront this question leads to ongoing uncertainty and insecurity for children in out-of-home care.

It is a significant omission from our current legislation that no-one is clearly assigned the responsibility for making these crucial decisions that will determine a child's future. This bill seeks to rectify this omission.

For many professionals involved in child protection casework, there is also a real reluctance to confront these critical issues as they fear that it will curtail birth parents' opportunity to rehabilitate themselves and limit their prospects for regaining custody of their children.

This reveals that many child protection professionals are actually more focussed on the rights and needs of the parents than on the need for abused children to have a safe stable and nurturing long-term home.

While the current legislation purports to assert the primacy of the rights and needs of children over that of their parents, the reality is that in practice, parents' interests prevail in far too many cases.

There is irrefutable evidence of a worldwide shift in child protection issues with the serious impact of substance abuse on parenting capacity on a major scale and its attendant risks to children's safety. In short, increasing numbers of drug abusing parents have created new problems in child protection work, and practice needs to change to reflect the degree of risk to children and the real prospect of rehabilitating abusive parents.

All too often children are the hidden victims of our community's growing drug problem. As honourable members will be aware, the Minister has already proposed additional measures to address some of these issues, with the introduction of a drug testing trial at two Children's Court locations.

However, what is reshaping professional debate in child protection is the growing awareness that old assumptions about restoration with birth parents being the overwhelming goal in casework planning no longer hold true for an increasing number of cases.

There is absolutely no doubt that substance abusing parents deserve the opportunity to enter drug treatment programs. On the other hand, there is no doubt that when parents refuse to enter treatment or are unable to overcome their addiction, their children may well require an alternative long-term placement.

Essentially, every child has a right to have their basic development needs take precedence over the timing of their parents' recovery from an addiction.

Substance abuse issues put the permanency planning debate into perspective and provide a crucial context for understanding these proposed reforms.

While the goal of child welfare systems is to promote and support safe and nurturing families for children, there is an ever-increasing number of cases where this cannot be achieved within the biological family.

Consequently, alternative long-term placements must be sought for these children—and we as a community have a responsibility to ensure that those long-term placements provide these vulnerable children with a better alternative.

It is considered unacceptable for children to be parked in a series of temporary placements, or periodically restored to their parents and repeatedly abused while parents are given unlimited chances to kick their drug habit or deal with some other problem and get their life together. This is damaging children and it is not putting their needs first.

Childhood is finite; it is time limited. There is a limited window of opportunity to ensure a child's basic developmental needs are met so that he or she has the capacity to grow into a balanced and functional adult.

It is well recognised that condemning children to spending their most formative years in an insecure series of temporary placements, interspersed with repeated episodes of abuse and neglect, is a recipe for disaster.

What the bill proposes is hardly revolutionary. It goes nowhere near the types of measures being introduced in the United Kingdom and the United States, where prescribed time limits, compulsory adoption and adoption quotas are being introduced.

This bill proposes some very modest reforms. It recognises that adoption is only one option in a range of long-term placements, but it does at least ensure that adoption is considered where appropriate for children in care. This is an important step. Although adoption is technically possible for children currently in long-term foster care, the reality is that it is rarely, if ever, considered.

The bill also proposes amendments to existing provisions concerning sole parental responsibility orders. Sole parental responsibility orders are intended to operate as a more permanent form of care, but one that falls short of the legal certainty and finality offered by adoption. In order to reinforce the status of sole parental responsibility orders as an intermediate step—as the most permanent option besides adoption—the bill proposes to restrict applications to vary or rescind these orders after they have been made.

The aim is not to completely prevent further court review of orders once they have been made, but to limit the number and frequency of appeals in these cases. This is to try to reduce the destabilising impact of ongoing court proceedings, and to enhance the legal certainty and stability associated with a sole parental responsibility order.

Consequently, the bill proposes that applications to vary or rescind a sole parental responsibility order may proceed only if they have the support of the agency which last supervised the child's placement, as well as the leave of the court. This presents potential applicants with an additional hurdle to overcome before they can ask the court to review the order.

Current experience suggests that a major source of uncertainty and anxiety for children in care is when birth parents apply for a variation of court orders, especially when they have little or no prospect of succeeding. While there is no intention to remove a parent's general legal right to return to court to seek custody of their child, the bill seeks to balance the merit of such applications with the level of distress and instability which is likely to be generated for the child.

In the case of sole responsibility orders, the inclusion of more restrictions on the capacity to return to court is consistent with its status as a more permanent form of care. In relation to other orders, the bill introduces an additional requirement that the court should consider whether it is in the best interests of the safety, welfare and wellbeing of the child or young person before granting leave to allow an application to vary or rescind a court order.

It also proposes amendments designed to limit unnecessary court adjournments and applications for variation or rescission of court orders to reduce the uncertainty and instability for children created by ongoing and drawn-out court proceedings. After all, it is important to note that the court has already presided over the case, considered the child's situation in detail and made what is intended to be a final order.

It is not in the child's interest for the court order formalising his or her living arrangements to be continually revisited. This is not conducive to ensuring a settled and permanent placement for the child. However, it is clear that for care arrangements other than adoption there still needs to be some avenue for review of court orders.

The proposals seek to balance the need of the child for certainty and stability with the parent's legal right to challenge court decisions.

Debate on this bill has a special resonance for the Aboriginal community because of the history of the removal of Aboriginal children. It is well known and acknowledged, at least on this side of the House, that Australia has a shameful history of the removal of Aboriginal children from their birth families.

Earlier this century, until only a few decades ago, many Aboriginal children were taken forcibly from their parents and placed with white families, or institutionalised. That had a devastating impact on the Aboriginal community, with many of those affected never again seeing their family members. As we all know, the stolen generation continues to be a source of much grief and sorrow.

I am proud to be a member of the Carr Government, as Premier Carr was the first Premier in Australia to issue a formal apology to the Aboriginal people for the suffering caused through such policies.

The Government is determined to learn from the mistakes of the past. In recognition of that our current child protection legislation and adoption legislation already contain special safeguards concerning the placement of Aboriginal children and maintaining their cultural identity.

While the record of New South Wales in providing culturally sensitive out-of-home care for Aboriginal and Torres Strait Islander children is better than that of other Australian States in many respects, the Minister has acknowledged the need to keep working on this.

She has committed the Director-General of the Department of Community Services to a series of meetings with the Aboriginal community to discuss concerns which have been expressed about the current out-of-home care practice for Aboriginal children.

Both she and the Minister for Aboriginal Affairs will be taking a keen interest in the outcome of this process.

It is disappointing that there has been some attempt to dismiss these measures to improve permanency planning for children in care by suggesting that it simply represents a return to the "stolen generation".

Nothing could be further from the truth, as is clear from a simple reading of the bill. Such claims are irresponsible and can be readily refuted.

Most modern-day Australians share an absolute abhorrence at the pain inflicted by past practices with the experience of the stolen generation. But we cannot afford to allow our abhorrence at what happened in the past to blind us to the new problems that are unfolding today.

We need to ensure that these past experiences inform our response to new problems so that we cannot repeat the mistakes of the past. This is what this bill aims to do, by incorporating a number of safeguards and measures to address issues relating to Aboriginal children in the care system.

Today there is a new generation of children experiencing different problems, such as a drift in care and multiple placements, leading to an inability to form emotional attachments, and we cannot overlook these problems.

No reform process is ever easy, but this process has been productive.

There has been an exhaustive process of consultation on these proposals, and the current bill is the culmination of more than 18 months of discussions.

The Government has reinforced the continued commitment to the Aboriginal child placement principle; that it is expected that for cultural reasons adoption would rarely occur for Aboriginal children; that legal jurisdiction for adoption remains with the Supreme Court, and that the bill does not amend the current adoption legislation; and that the Government will carefully monitor adoption placements for Aboriginal and Torres Strait Islander children.

If there are more than five placements of Aboriginal children to non-Aboriginal families in any 12-month period, this will trigger a review. In response to discussion about how the use of sole parental responsibility orders may impact on Aboriginal children, the Government is also undertaking to monitor the use of these orders. Again, if the number of such orders placing Aboriginal children in non-Aboriginal placements exceeds five in any 12-month period, this will also trigger a review.

In terms of legislative safeguards for ATSI children, the bill requires the consent of two Ministers—the Minister for Aboriginal Affairs and the Minister for Community Services—before a case plan can proceed which proposes a sole responsibility order or an adoption in a non-ATSI placement for an ATSI child.

In terms of the bill's requirement of a review of the permanency planning provisions within five years, in response to the concerns of the ATSI community the bill requires that this review specifically includes the impact on ATSI children. There is, of course, nothing to prevent this review being triggered before five years has elapsed if there are any emerging issues that require examination.

The bill before the House now is one which is truly reflective of almost two years of discussion and debate, and the Government acknowledges the validity of the many issues that have been raised.

Although the provisions in the bill are relatively modest, it is believed that in time they will lead to a greater awareness of the importance of permanency planning for children in care, and practical and tangible improvements in the quality of care experienced by abused and neglected children in this state.

The Minister has emphasised that the bill is not expected to be a magic wand for addressing all out-of-home care issues. But it does provide an important foundation for ongoing and far-reaching reform of our out-of-home care practice. I commend the Bill to the House.

**The Hon. PATRICIA FORSYTHE** [8.15 p.m.]: This proposed legislation has had considerable media coverage for at least 18 months—back to February last year. The Minister in the other place delivered a second reading speech some time ago and the debate proceeded on a different print of the bill that resulted from amendments. That bill is quite different from the Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill (No. 2), second print, that we are debating in this House. The reason I emphasise the name of the bill is that many members at different times will have received letters and read media comments and comments from the Minister on the matter, but unless they focus on the bill that has been circulated today in this House I suspect many such comments and reports will be superfluous to this debate.

This bill is a mere shadow of the one that began its life in the other place. Some of my colleagues have taken a close interest in this proposed legislation because, like so many bills dealing with children and young persons, the subject excites not only interest but passion and enthusiasm. Consequently, many members will wish to speak in this debate. Therefore, members must be clear about exactly what bill we are debating. The bill is different from that which the Minister talked about last year when she spoke about adoption and permanent placement. It constitutes an outcome for some children who had been abused. I understood what the Minister was trying to achieve with the initial bill and had some sympathy for her point of view. However, this bill is an infinitely better bill.

The Opposition certainly will not oppose this proposed legislation, although I understand we will move at least one amendment in Committee. When that amendment is available it will be circulated to honourable members. This bill passed through the lower House last night and today, after 2.30 p.m., it became clear that it would be debated in this Chamber today. Consequently, the Opposition is probably still working with Parliamentary Counsel on the final form of its amendment relating to kinship care. Honourable members will be pleased to know that I will not take up the same length of time taken by my colleague the shadow Minister in the other place to debate this bill. In his contribution he was quite critical of the Minister. I do not step away from his comments, but he knows my point of view on the matter. The debate about why women are in Parliament and whether we have different points of view becomes starkly clear when issues concerning children, young people and babies, and child protection are being dealt with.

When I was the shadow Minister with responsibility for these issues I found the portfolio emotionally very draining. One cannot help but be moved by the phone calls and letters one receives, and the interaction one has with people in the community who experience these issues from a different perspective, particularly from that of foster parents and grandparents who saw children they believed were being abused and perhaps not being adequately supported by parents or by the Department of Community Services.

For all the comments that have been made about the genesis of legislation, I accept that the Minister, as a caring mother and a grandmother—I do not take away from my colleague the Hon. Ron Dyer, who was an equally caring Minister—tried to do something different and adopt a different approach. I do not back off from my support for her in that regard. No-one who comes from a caring background and who is a caring parent could possibly understand how people can do to children and babies what the Minister and shadow Minister have seen from time to time. Adoption as part of that response is not particularly unique. Indeed, Australia uses it almost not at all. Some other countries use it far more as part of what might be termed the management of children once they are taken out of care. The Minister and I have had some talks about this, and I say quite genuinely that in the Minister's heart it was not about the resources of her department. I have not tried to be political about that.

I understand the Minister tried to achieve different outcomes for children. The number of times she must have signed off on orders to restore children to parents, only to see them back in care, having been abused, would be heart rending. No Minister could fail to be touched. I suspect it is mothers, grandmothers and women who would best understand her approach. However, as Minister and shadow Minister one must put objectivity into the debate. One must leave the subjective feelings of compassion and concern to consider what is in everybody's best interests. I am not sure that my colleagues will thank me for these comments, but the Minister knows I regard what she did as a genuine attempt to improve the lot of some of our most abused young children. Whether it would have achieved the best outcome is a moot point, because we now have different legislation. We now have good legislation that the House is able to approve. It is a step forward in the interests of the young people of New South Wales.

Last year, when the Minister raised the concept of permanency planning, it seemed that some people were taken by surprise, as if it were a concept that was not dealt with when we considered the 1998 legislation. Honourable members who kept documentation from the review of the 1987 legislation conducted by Professor Patrick Parkinson would know that the concept of permanency planning was part of the review process. Patrick Parkinson was quite clear about the concept of permanency planning in some of the material he provided by way of background when he examined parental responsibility. In particular he talked about what I regard as the best area of the legislation: the sole parental responsibility order. It is not new, but the timeframe is different. In case anyone thinks it is somehow new, I quote from page 33 of the section entitled "Review of the Children (Care and Protection) Act 1987 Law and Policy in Child Protection: A Summary of Key Issues":

In a small number of cases, children are placed in long-term substitute care with little involvement from their birth parents. Consideration should be given to recognising these as permanent placements in a new family by empowering the Children's Court to make an adoption order. An alternative would be for the Court to make a "sole parental responsibility order" in which the foster-parents would have all the legal powers of birth parents (including the residual powers which would otherwise be located with the Minister). Birth parents would continue to be recognised in law, access arrangements and financial provision would continue, and the arrangement would continue to be subject to on-going monitoring.

The concept of sole parental responsibility, which is at the heart of this proposed legislation, was flagged in the original discussion paper, and the concept of permanent planning was very much part of that discussion process. I say that because many people will claim ownership of aspects of this legislation. I believe that when we accepted the 1998 legislation we went in with our eyes open. That legislation received bipartisan support at the time, but it focused on some of the issues that are dealt with by way of amendments in this bill. I will return to some of those later.

I turn now to the key issues in the bill. It is not my wont normally to go through all parts of the bill, but given that this bill is different and very clear—it is now very simple legislation that we can all understand—some aspects of it deserve explanation. The principal issue is the concept of permanent placement. The question is not whether to remove from the home children who are being abused. None of that has changed. The question is the management and care of children after they have been removed from their birth parents. The definitions set out in item [1] of schedule 1 are important. What is permanent placement? What is a permanency plan? A permanent placement means a long-term placement following the removal of a child or young person.

The bill sets out how long-term placement can be achieved. It can be done by restoring the care of a parent or parents; by placement with a member or members of the same kinship group—I will come back to that aspect because it is certainly significant in so far as the Aboriginal community is concerned; by long-term placement with an authorised carer; by placement under an order for sole parental responsibility; by placement under a parenting order under the Family Law Act; or by adoption. In other words, a sequence of possible outcomes for the child. We should keep that important definition in mind.

Next I want to highlight the principles we are applying in this legislation. What is the key function in child protection legislation? Well, it has to be the best interests of the child. That concept is carefully enshrined in this legislation. Proposed section 9 deals with the principles to be applied in the administration of the Act. It provides quite clearly that the safety, welfare and wellbeing of the child or young person who has been removed from his or her parents are paramount over the rights of the parents. That is the heart and soul of this legislation. The bill is not related to the rights of parents, or parents who, for a variety of reasons, whether in the short term or the long term, have forfeited their rights. It is about the rights of children to be protected, nurtured and cared for; about their safety and their wellbeing.

That is the first consideration and, in all cases, it ought to be the first consideration of the Department of Community Services and of the courts. It was certainly my consideration from day one when I became shadow Minister in this portfolio. It was not something I had been steeped in any of my training or education,



but at least two former Ministers said to me, "The key issue, your starting point, is the fundamental rights and needs of the child." And that is what is embodied in this legislation. I believe we need to bear that in mind. If we are talking about a permanent plan for children that involves out-of-home care and not restoration to the family—and that is such an enormous step—then the only consideration is the best interests of the child. That can be the only consideration at the end of the day, but there are many factors that we might need to look at as we move down that path.

I will move on through the bill because, as I said, it is a very simple bill. It is a very different bill from that which was the subject of some debate in the other place. It is important to note some of the aspects contained in the bill. Item [4] of schedule 1 will insert new subsections (f) and (g) of section 9, which will require arrangements to be made in a timely manner, and that is critical to many of the decisions that will be made later. Some members of the Government will probably call upon aspects of the research prepared for the Government by Professor Bruce Perry, who I understand is a professor of psychiatry from the United States of America. Having read the debate in the lower House they will refer to the importance of placing a child quickly; being able to recognise the signs; and being able to deal with some of the early warnings that a child might have been abused.

In the briefing notes provided by the library in regard to the original bill there was reference to Dr Bruce Perry's research. The notes stated that a major proponent of his view argues that aggressive early intervention, which restores a sense of safety and control to abused and neglected children, is required. One of my colleagues said that the research had not been subjected to sufficient scrutiny to enable us to take it as a given. I have to say I attended a seminar conducted by Dr Perry in Parliament House last year. I did so to gain an understanding of the way that the Minister, and indeed officers of her department, think. I know that the Cabinet was briefed on this issue. It is important that we act in a timely manner, but it also has to be a manner supportive of parents. While we focus on the interests of children, we must from time to time recall why it is that children are sometimes removed from their birth parents. We must understand that. We should not ignore it or underestimate the impact of post natal depression on some mothers.

Sometimes a child may be taken from the family because the family—meaning, in particular, the mother—has an inability to cope. Research suggests that that is a short-term arrangement. A child or children—not necessarily the baby, because how the mother copes with them can impact on toddlers and other children in a family—may be removed, but may be able to be restored. What is important is minimising the damage to the child or children. The amount of abuse suffered by a child may impact, indeed, will impact on their behaviour as they grow up. That, as I understand it, was the effect of Dr Perry's research. The sooner there is intervention and a strong caring environment is put in place, the quicker the process of restoration of a child to what we would regard as the normal stages of development.

Without a doubt, a child that is subjected to abuse, particularly at an early age, will see their own progress, their own capacity to grow—be it speech, behaviour or the capacity to interrelate with other people—damaged. I recall that last year the Minister spoke about children who had been the victims of cigarette burns. What psychological damage is caused by such treatment? The sooner children are removed from such an environment the better it will be for them in the long term. I do not intend to be political in this debate tonight because I believe that at the end of the day we have to have common ground. We are considering a matter that goes to the core of our society. It is something we have to be able to move forward on.

I do not want to say this is just about the resources of the department. We know, however, that at the end of the day how well one can deal with a child and how well one can make an informed decision as to when to remove a child from home will ultimately come back to the resources of the department, and the capacity and professional decision making of departmental officers. It is easy to place in legislation a requirement that arrangements should be made in a timely manner, but we know that behind this very clinical explanation are some really hard-core issues about how well departments and courts respond, and how well courts interpret the information that has been provided. It is about time we stopped always giving parents the benefit of the doubt on some of these issues.

The bill states that, unless it is contrary to the child's best interests, decisions about placing young people out of home care and ensuring that they are in a safe and nurturing environment will take into account the pressures on the child or young person and retention by the child or young person of relationships with people significant to the child or young person, including parents, siblings, extended family, peers, family friends and community. Obviously, factors to be considered are the age of the child, the needs and interests of the child, the knowledge of the child, and the capacity of the child to make some decisions. After an interim care

order is issued by the Children's Court what can be done in permanency planning? As I said earlier, this process is not about decisions to remove children from home; it is about decisions for the management and care of children once they have been removed from their birth parents.

New section 78A sets out the regime for permanency planning. But permanency planning is not permanent care. Permanency planning may involve evidence put to the courts and decisions made by the court about the future care of a child, and how long the child will be out of home. A parent may be identified as having short-term problems that can be overcome. Some of the problems may have long-term implications for the parent and child but may need to be worked through. The principles in the original Act also have to be considered in relation to the family, the extended family and the support that can be offered. The definition in the bill is in accord with what the Association of Children's Welfare Agencies put to the Minister as being appropriate. Therefore, mindful of the number of organisations that the association represents, the definition in the bill probably represents an appropriate compromise on what we see as the key issues.

The amendments in section 78A with respect to permanency planning relate to meeting the needs of the child or young person, avoiding the instability and uncertainty arising through a succession of different places, providing the continuity of relationships with family—key elements—and recognising the long-term security that will be assisted by permanent placement. I will return later to some of the issues concerning Aboriginal and Torres Strait Islander children and how well they have been consulted, and how well some of what we have been talking about has application to the community. In the case of a proposal for sole parental responsibility or in favour or in recognition of adoption by a person who is not an Aboriginal or Torres Strait Islander, the approval of the Minister for Community Services and the Minister for Aboriginal affairs is to be given. In contrast to the situation applying to other children, two Ministers have to sign off on in such a case. But as our amendment will show, that provision does not go far enough.

New section 83 sets out the steps toward the achievement of a permanency plan, the issues that the courts would look at, including the director-general's assessment of a whole series of issues. I ask honourable members to look in particular at this new section. At the end of the day the court will make orders based on a range of assessments, a range of options that have been put to it. I hope that many children will not have to be involved in those steps. But we would all be aware that there are some children who, having left their families or been taken from their birth parents, are never restored to their birth families. It may be because of the nature of the parents; it may be because of the nature of the child.

In this State we have never put in place a permanent regime to help and support those young people, particularly where perhaps through no fault of the parents, they cannot cope. We have always apportioned blame. Parents have been labelled as "not good parents". I think a better option is recognising the capacities, and recognising that some parents are just plain bad parents. I do not step away from that. Why should people who have repeatedly physically abused their children have the children restored to them? If they have sexually abused them they are unlikely to get their children back, and this has been the case for a long time. Children have suffered horrific injuries. Why should the parents necessarily have rights as parents? That is what is fundamental in what the Minister has been trying to say. On the other hand, children and parents with disabilities should be supported. A parent may have a mental illness or suffer from depression—an element of mental illness. If the parent has the capacity to cope in the longer term a permanent plan could be developed that involves those parents.

Next year this State will have in excess of 15,000 children in need of care because of the insidious impact of drug abuse on people's capacity to care for young people, people's capacity to be good parents. I have not seen the additional resources coming into the department to match what I think must be a crisis in some areas. That is one of the most difficult aspects of our society. Parents who might otherwise be capable and intelligent, to be reasoned in their judgment and able to act appropriately, have simply lost it. I certainly agree with the Minister that the onus of proof is on those parents to prove that they can be good parents. As shadow Minister I saw a variety of things, including case studies, which caused me to realise that the notion of the rights of parents from time to time should be challenged. The rights and needs of children are paramount. Some people have said that parents have responsibilities rather than rights. It is up to the courts to work out the distinction between rights and responsibilities. What I particularly like in this bill, as I said, is the option to move towards sole parental responsibility short of adoption. Section 149 is to be amended to allow orders for sole parental responsibility. Earlier I quoted Patrick Parkinson.

The review does not take away the existence of birth parents, and does not deny them their legal entity and responsibility. In this State thousands of foster parents care for children for the whole of their juvenile lives.

For all intents and purposes, the foster parents are the parents. There is a difference between having that care and being an adoptive parent. I will explain the difference as I understand it. One of the reasons that I am particularly attached to the sole parental responsibility is because one of the real problems for foster parents is that the Department of Community Services is forever over their shoulders. There are many fundamental decisions in the day-to-day care of children that the foster parent cannot take.

This bill gives foster parents greater autonomy to make the normal day-to-day decisions in the care and interests of the child. The legislation states that an order can be applied for after the child has been with a carer for two years. That was in response to the submission from the Association of Children's Welfare Agencies and is appropriate. Recently, when I was in Canada, that debate was under way; they were debating the appropriate period. Legislation must define that period, and I am not sure that we have necessarily got it right. At the end of the day the individual circumstances will become a matter for the courts. On the one hand, this is about getting the department out of the day-to-day lives of the carers. On the other hand, to some foster parents the difference is that through adoption that connection with the department is severed. For some foster parents that means severing the opportunity to be paid the allowance to care for a child. Some children in care have multiple needs; many have a disability and have not been able to be cared for in their birth families.

However, they have found loving, caring, spectacular and special people who take on that responsibility. The sole parental responsibility order will allow carers to gain the allowance, but will take the department out of their day-to-day lives. If it is not appropriate that the department be included in the day-to-day lives, presumably the courts will not grant that order. However, for a permanent plan, consideration should be given to how long the child should be in care, and what should be a reasonable time in which the child should be restored to the birth parents. If that cannot be achieved, the courts will have to consider the longer term outlook of care for the child. Part of that decision will be at what point the foster parents could take over that sole parental responsibility. That is what the Minister wanted: stability and security, as well as a strong bond between the foster parents and the child. A sense of certainty is lacking at the moment. In many families that link will last from birth to adulthood.

From time to time children—even when they reach adulthood—will go through a process of adoption so that they can become part of the family when they are able to make those decisions. Therefore, that is the essence of the legislation. With the exception of Aboriginal and Torres Strait Islander children the remainder of the current legislation meets the needs of various interest groups. It certainly has addressed many of the issues they have raised in the past 18 months. The legislation is not out of keeping with the original discussion paper, as proposed by Patrick Parkinson. The concept of permanency planning was fundamental to his discussion paper and was the background to the direction we took in 1998. Page 35 of the review stated:

The parenting plan would be negotiated with parents and make proposals concerning:

- The type of placement appropriate to the child's needs;
- The way in which parental responsibility will be allocated;
- Access arrangements.

If the department or the court decides that restoration is realistic, a restoration plan could be made. The report further stated:

Wherever this is consistent with the child's best interests, birth parents should retain aspects of parental responsibility. Where restoration was not deemed to be feasible, the parenting plan should reflect "permanency planning" principles.

It was recognised at the time that restoration would not always occur. The report continued:

Birth parents could retain the right to seek rescission or various of any order made by the Court. Parenting plans should be based on the principle that the legal powers associated with parenting must match the responsibilities. Certain actions by substitute carers should, however, be subject to approval by the child's legal guardian.

We have moved a little from that, but the 1998 legislation enshrined the concept of permanency planning. What we did not do well was to set out the regime, the order, in which to give consideration. We have reinforced that in this legislation. The interests of the child are the most important consideration. However, some parents—through no fault of their own—will come to the notice of the Department of Community Services, sometimes through a snoopery or prejudiced neighbour, and often it will involve parents with an intellectual disability who can be strong and caring parents but may lack some of the living skills to give the necessary support to their child. We have been too keen to take those children out of their families.

A better approach may have been to bring in services, wrap them around the birth parents and acknowledge their rights as parents. I hope that nothing in this legislation prevents us from adopting that approach. Some parents should forfeit their parental rights because they have not been responsible. Others, who come under the notice of the department, feel that the child has been taken away needlessly. It is better to bring in the services. If that can be accommodated within the permanent plan for the child—and there is no reason why that cannot be done, because part of the legislation involves restoration to the birth parents—I believe that that is the way forward. Some disability rights groups had some concerns in that area. In the Minister's response she may address some of their concerns.

I turn now to Aboriginal care and kinship. During the dinner break some letters appeared on my desk about the consultation that the department has had with various Aboriginal support lobby groups and community groups. Before we go to the Committee stage I will have an opportunity to clarify whether the groups are giving wholehearted support to the legislation. I understand that those groups believe that there has been some lack of consultation in relation to this legislation, and they still have some concerns. Tonight we will clearly define "kinship care", which is particularly significant within Aboriginal communities. In the original review of key issues, Patrick Parkinson produced a special section on the needs of Aboriginal children and families.

Aboriginal children are overrepresented in out-of-home care, in many statistics on child protection and child welfare, and in juvenile justice and corrective services facilities. It is about time we got something right and learnt some lessons from history. We need to move forward on this issue. I did not have an opportunity to go through all the amendments because they were still being drafted. However, in Committee I will return to some of the definitions and the reasons for the amendments. Patrick Parkinson outlined the underlying emphasis in writing the legislation. He said:

The basis for the separate chapter is recognition of the unique history of Aboriginal people's contact with welfare and of the continuing impact of policies which involved removal of children from their families, communities and culture.

He gave a detailed analysis of what he called the legacy of past injustice and he attempted to look at how we can move forward. The section 87 placement principle was the subject of significant discussion in his paper. Not to look at these key and special issues is not to do justice to what the Minister is trying to achieve with the bill. I indicate to crossbench members that I will move amendments in Committee.

**The Hon. RON DYER** [9.01 p.m.]: I speak to the Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill No 2 with very strong feelings, based partly on my experience as a former Minister for Community Services. I strongly endorse the comments made by the Minister for Community Services, the Hon. Faye Lo Po', when she issued her media release with respect to this bill on 23 October. Among other things, she said:

We have to get serious about putting the rights of children above all else. Children only grow up once and it is our responsibility to ensure their childhood is not squandered by allowing them to drift from one placement to another ...

All too often children who are abused find their pain is prolonged by a system which deprives them of what they need most, a stable, loving home.

I start my contribution by referring to those remarks of the Minister because I regard them as the central consideration of this bill. What are the interests of the children? If that is overlooked—and I believe it sometimes has been—the interests of those children are set to one side and that is not satisfactory. I refer to my experience as a former Minister in this portfolio. I clearly remember that each week night I would take home at least one large file bag, and on weekends I would take home at least two file bags, and I would work through them. When I came across a particularly distressing child protection or substitute care file my wife, Dorothy, would have to listen to me denounce, in the privacy of my own home, the outrageous conduct, as I would term it, of the parents in the case I was dealing with at that time.

I will not go into the gruesome detail of what some parents do to their children. However, I formed the conclusion, on the basis of my experience in having read such matters, that although it sounds harsh to say it some parents simply do not deserve to retain custody and control of their children. That is the reality. There is only one thing to do: as the law allows, to remove those children from the care of those parents. The problem arises, of course, when some children are placed in foster care and for one reason or another they go through a series of placements. Some children go through 12 placements. Is it any wonder, having had that unsettling experience, that when they become teenagers they are mixed up, to say the least, and end up as a client not only of the Department of Community Services but also of the Department of Juvenile Justice? There is an unfortunate crossover between the two departments. I regard it as absolutely vital that everything should be done to prevent children from having such experiences.

Clear evidence in both local and international studies indicates that multiple foster care placements are damaging to children. To state that should be enough. Commonsense alone would tell us that that is the case. Irreparable harm can occur to the emotional, psychological and social development of children who are subjected to such instability and lack of security. To say that is not to attack foster parents. I am aware of many fine foster carers in this State. I can think of one in particular who probably would not mind me mentioning her name, Mrs Pat Walker, who lives in Newcastle. When I was Minister she held office in one of the foster care associations. One could not think of a better person—she goes to inordinate lengths to care for a succession of children. However, for one reason or another, sometimes children go through a series of placements. It may be because the children are difficult to cope with, foster carers become fed up with the task, or feel that they are not sufficiently remunerated, or some other reason.

When I was Minister, foster care payments were substantially increased, particularly for older children—that is, teenagers. No doubt they have been further increased under the tenancy of the current Minister. There is broad agreement amongst child protection professionals that greater emphasis needs to be placed on permanency planning for children in out-of-home care. What has admittedly caused some consternation is the fact that this bill challenges the prevailing assumption among some child protection professionals and some Children's Court magistrates that eventual restoration to birth parents is the goal to be pursued at all costs in every single case. That is a proposition with which I do not agree, and I am sure that the Minister does not either. When the Minister first introduced this bill in another place earlier this year she noted:

Childhood is finite. Early years are precious, and we owe it to children not to squander it by giving abusive parents too many chances to get their act together.

As a parent I am only too aware of the fact that children grow up very quickly. The early years are precious; they are impressionable years. They are years when children develop very quickly and if sufficient attention is not given to the task the childhood and life chances of that child can, indeed, be squandered. In introducing the bill the Minister has been very much influenced by recent policy and practice changes in relation to the management of children in out-of-home care in the United States of America and in the United Kingdom. In both of those jurisdictions emphasis has been placed on adoption as an important and underutilised aspect of permanency planning.

I would be the first to agree that in recent decades adoption has become less popular and less common than it once was. In fact, the whole thing has been over done. Various social trends have brought about that outcome. Some 20 or 30 years ago I guess there would have been 2,000 or 3,000 adoptions annually throughout the State. Today, apart from intra-family adoptions by step-parents and the like, there would be fewer than 100 adoptions throughout the State in any one year. There has been a massive change in that respect. That is not to say that adoption as a permanent placement option is not desirable in social or policy terms. It is not the only option, but it is desirable and should be availed of in appropriate cases.

The other pressure for change has occurred as a result of hundreds of letters the Minister has received from foster carers and parents whose children were removed because of parental neglect and abuse. Departmental case study files, to which I referred at the beginning of my speech, unfortunately highlight, sometimes in a gruesome and all too realistic manner, the way in which the system—if I may use that term—has failed many children by not providing them with secure long-term placements in a caring and loving environment. Many of the cases brought to the Minister's attention also highlight the significant role that magistrates play in child protection matters, as their decisions affect both children and their family life and direct the work of the various agencies engaged in child protection.

It must be understood that the legislation under which the Minister operates places the duty and the right to make a care application with the director-general of her department. However, when the matter goes to court it is within the competence and ambit of the magistrate to decide what will happen in respect of arrangements for the future care of the child. The legislative mandate of family preservation and child protection creates some difficulties for magistrates and child protection services alike because the two aims that I have mentioned—family preservation and child protection—often conflict. The permanency planning amendment bill endeavours to address the tension by stressing that decision making should be guided at all times by what is in the best interests of the child or young person.

A study was undertaken in 1999 by Sheahan in the Victorian Children's Court for the years 1993 to 1995 to discover the factors that influence magistrates' decision making in child protection matters. It concluded that, while the intention of legislation is to enhance children's rights—that has certainly been the intention of

legislation in this State—in reality the legal process appears to protect parents' rights more than children's rights. One magistrate referred to the:

... Madonna complex of you know, mothers and babies, they belong together and mothers love babies and there is no problem.

Unfortunately, there is quite a problem. Mothers are not always Madonnas and fathers are not always Josephs. This view does not accommodate the idea of a dangerous family nor the complex family situations that occur in child protection. The amendments in this bill seek to ensure that children's rights are paramount. I cannot stress that point too strongly; it is the central purpose of this legislation.

Earlier this year the Minister for Community Services, the Hon. Faye Lo Po', met Professor Richard Gelles, Director of the Family Violence Research program at the University of Rhode Island, where he is also professor of sociology and psychology. Professor Gelles is the author of *The Book of David*, which explores the tension between the rights of parents and the ideology that the child is better off with his or her own family compared with what is in the best interests of the child. Professor Gelles' has closely researched what some refer to as the "rule of optimism": the notion that all parents want to, and can, change.

Gelles asserts that a major failing of child abuse and neglect assessments is the simplistic way in which behaviour change is conceptualised and measured. It is seen as a one-step process, and this is a dangerous misconception on the part of both the courts and child protection workers. Social scientists who study behaviour change across a wide range of behaviours have concluded that relapse is part of the overall change process. They have found that measuring change and the likelihood of change is much more complex than assessing abusive parents' level of co-operation with court-ordered programs.

Gelles argues that caseworkers often use compliance with case plans as an indicator of change. For example, parents who attend parenting classes or go to counselling, anger management programs or drug rehabilitation are seen as changing, even if those same parents continue to deny abuse and neglect. It must be understood that complying with a court-ordered program of services or classes is not the same as undergoing real behaviour change. The belief that having participated in such programs will cause abusive or neglectful parents to change enough to take decent care of their offspring can lead to years of foster care drift—a damaging process to which I referred earlier.

To put the issue in perspective, Professor Gelles points out that when women are violently abused by their husbands, judges do not order them to enrol in an intensive marriage preservation program or assign a marriage preservation worker to their families. He argues the need to establish very early in the process, when a child first comes into care, the realistic likelihood of his or her restoration to the biological family. To do otherwise is just plain wrong as it means holding children hostage as part of some perverse experiment to see if this time drug rehabilitation or some other court-mandated measure will succeed.

New South Wales research also indicates that professionals in human service agencies operate on the "rule of optimism". This occurs, for example, when workers are aware that one or both parents are on a methadone program. There is sometimes a presumption that the parents' drug dependency is being treated and that an infant may be safely discharged to their care without any further assessment. Research also found that major decisions about infants' placements were often made after a very short period of parental drug abstinence—sometimes only a matter of days. There seemed to be an assumption that if the parents stopped using drugs—even if only for a short time—they had recovered from their addiction.

Such premature optimism fails to take into account the inherent difficulties in effecting long-term abstinence or any other long-term behavioural change. Any honourable member who has read the files I have read about drug-abusing parents and the things they have done to their children would be as cautious as I am about making a decision on the basis of a short break in substance abuse patterns. A reduction in parental substance use may not necessarily lead to an improvement in parenting capacity.

Research has found that an abusive parent may be a treatment success as an individual, yet still be an inadequate parent or spouse. There is also a belief that dysfunctional families with a history of child abuse and neglect can change their ways if sufficient resources and support are made available. That may be correct in some cases, but Professor Gelles' research challenges this view. He argues that since 1993 the United States Federal Government has allocated \$250 million per year for family preservation and support programs with the aim of increasing the odds of delivering successful family reunifications. This amount was increased in 1997. However, the harsh reality is that adding resources, staff, more training and other resources to child welfare reforms in the United States has not yet resulted in measurable improvements, a reduction in child fatalities or increased child wellbeing. It is a seemingly intractable problem.

For those reasons, this permanency planning bill contains key provisions requiring more stringent assessment as to whether restoration to birth parents is appropriate. It will ensure that case plans submitted to the courts include plans for long-term placements, including adoption as one—and I stress only one—of the options designed to achieve permanency. It will limit non-essential court adjournments and applications, particularly from birth parents, for a variation or rescission of court orders.

The underlying principle in the Department of Community Services and in the Children's Court has to be as it is in the Family Court of Australia: what is in the best interests of the child, not what is in the best interests of the natural parents. It is not good enough to adhere to that as an overriding principle. I conclude my contribution by saying that Ms Gillian Calvert, the Commissioner for Children and Young People in New South Wales, said in a letter to the Minister dated 22 October that she had received a copy of the amendments to be moved in Committee and expressed her support for them. She added:

I believe that the Bill, in its amended form, will have significant benefits for children and young people in New South Wales in that the primary focus of the Department and of the Courts will be on putting in place arrangements which are best likely to ensure security, stability and continuity of care for children and young people who are not able to be cared for by their parents.

Ms Calvert concluded:

The Bill, in its final form, achieves a good balance between the interests of the various stakeholders while keeping the safety, welfare and well-being of children and young people firmly in the forefront of decision-making processes.

I have every confidence in her judgment. She served me very ably and with great expertise as my child protection and substitute care adviser. I am sure she would not write in those terms unless she had formed the honest view that the legislation achieves the objectives I have sought to describe in my contribution to this debate. I very strongly support this measure on the basis of my belief that it puts the interests of children, often troubled children, first.

**The Hon. IAN COHEN** [9.23 p.m.]: I support the Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill, but I have concerns with some technical aspects of it. This bill has a long and chequered history. The second reading debate on the first version was held in June 2000, nearly 18 months ago. The present version has changed considerably from the initial bill. When the initial version was introduced child protection experts were divided on how it would operate in practice even though there was broad support for the objective of strengthening the emphasis on permanency planning. The Minister said in her second reading speech on the first version:

This bill aims to improve the case management of abuse and neglected children who have been removed from their birth parents, where it is unlikely they will ever be able to safely return home. The bill proposes amendments ... that will place greater emphasis on the need for permanency planning for children in out-of-home care.

As Patrick Parkinson, Professor of Law and expert in child protection law, said in his submission to the original bill, the objectives are laudable and widely supported by child protection experts. However, in his submission he argued:

I am not aware of any child protection professional who disagrees with this proposition or anyone who believes that eventual restoration to birth parents is the goal to be pursued at all costs, and in every single case.

The debate is not about whether restoration to parents is always desirable. It is about whether adoption is usually the best option if restoration to both parents is not likely to be possible.

The first version of the bill placed too much emphasis on adoption as a preferred means of permanency planning rather than as one aspect of permanency planning. The Minister said in her second reading speech:

The only option which offers real permanency and real security is adoption.

What are the disadvantages of adoption as opposed to other kinds of permanent placements? A main disadvantage of adoption, particularly for older children, is that the legal relationship between the child and the birth family is severed. Section 95 of the Adoption Act specifies that when a child is adopted:

... the child ceases to be regarded in law as the child of the birth parents and the birth parents cease to be regarded in law as the parents of the adopted child.

The child is no longer a member of the birth family; it becomes a member of another family. As Patrick Parkinson points out in his submission, this can be problematic for children who still wish to have contact with their birth family. For many children, the concept of family is more than just parents. Many children would have

had contact with brothers, sisters, aunts, uncles and grandparents. While in individual circumstance it may be totally appropriate that a child cease to have contact with parents who may have abused or neglected them, it does not automatically follow that a child should not be able, and indeed may crave, to continue to have contact with other members of their family.

In law, once adoption occurs the child has no legal relationship to members of his or her birth family. For instance, grandparents who may have seen their grandchildren on a regular basis since they were born suddenly have no legal right to continue seeing them. Where no adoption is involved, grandparents can apply to the Family Court for a contact order if they are suddenly deprived of seeing a grandchild because of new circumstances in the child's life—which can happen if the child is adopted. The advantages of adoption are that it is meant to provide certainty, stability and an end to temporary placements and changing circumstances.

Adoption is a legally secure option that is not subject to appeal. This enables a child to get on with his or her life and establish new relationships. It offers a hope of long-term stability and a family for life, it normalises the legal relationship between the child and the adoptive parents, and it gives the adoptive child and parents the same legal standing and protection as birth parents and child. The child is entitled to inherit from and through the adoptive parents, and is treated as the child of the adoptive parents for the purposes of social security, insurance, taxation et cetera. There are alternatives to adoption that do not sever the child's relationship with the family of origin but also provide permanency planning. One is to give parental responsibility to a relative, such as an aunt or uncle. Another is to make a sole parental responsibility order, which has much the same effect as an adoption without severing the legal relationship between the child and family of origin.

What is permanency planning? The bill inserts new section 78A, which defines permanency planning as the making of a plan that aims to provide a child or young person with a placement that has regard to principles set out in section 9 (f), meets the needs of the child or young person, avoids the instability and uncertainty that arises through a succession of different placement and temporarily care arrangements, provides for a continuity of relationships with family members and others significant to the child or young person as long as it is in the best interests of the child or young person. Barnardos Australia uses the following definition when referring to permanency planning:

Permanency planning is generally defined as time-limited, goal directed work with families which aims to help children live with nurturing adults who offer continuity and an opportunity for lifetime relationships.

Barnardos bases this definition on a belief that continuous, long-term living situations are significant for a child's development. Permanency helps to provide young people with a sense of identity, belonging, stability, attachment and bonding. In a 1996 report commissioned by the Department of Community Services entitled "Longitudinal Study of Wards Leaving Care", Judy Cashmore and M. Paxman describe the negative effects of instability and no permanency as follows:

The long term effects of repeated moves involving separation from care-givers are an impaired capacity for trusting relationships, "antisocial and asocial behaviours, chronic depression and low self-esteem, exaggerated dependency, and the tendency to compulsively, though unconsciously, evoke from the new environment a repetition of the original rejection." In addition, children moving from one placement to another are likely to change schools, and this in turn increases the likelihood of placement breakdown and contributes to their poor performance at school.

Commentators and community groups are largely happy with the new bill. There are, however, some concerns about technical aspects of it. For instance, a letter dated 8 November to the Minister from the Association of Children's Welfare Agencies [ACWA] states:

As stated in my letter to you on October 2001 ACWA has welcomed the recent set of amendments proposed by the Government for the Permanency Planning Bill. With these amendments ACWA is in support of the Bill.

Nevertheless there are some additional changes to the Bill which we believe should be made to further improve this important legislation. Most of these changes were outlined in an attachment to my letter of 22 October.

Patrick Parkinson, who is Professor of Law, University of Sydney, Chairperson of the Community Welfare Legislation Review that reviewed the 1987 care and protection Act, and who was heavily involved in the drafting of the 2000 care and protection Act, is also concerned about the technical and illegal drafting aspects of this latest bill. They do not raise any policy issues, but they could have negative impacts if not rectified at the Committee stage. The Greens will move amendments in Committee to deal with some of these issues. I hope we will get support from the Government. It is certainly time that the House dealt with this bill. The Greens support any moves to further protect children and young persons under these circumstances.



**The Hon. AMANDA FAZIO** [9.32 p.m.]: I support the bill and I support previous speakers who said that changes must be objective and not subjective. We must be objective about what is best for the long-term welfare of our children, and make that the focus of the bill. Honourable members have debated whether some provisions in the bill are appropriate and whether we are headed in the right direction. As honourable members are well aware, the United Kingdom and the United States of America have taken similar initiatives, although the proposals in this bill are not as severe as those introduced in the United States and the United Kingdom.

When we consider what needs to be done we must bear in mind the potential of children. Nothing is sadder than looking at children and knowing they will never be given the opportunity to fulfil their potential. All children have the right to be safe, secure, and well cared for, and to have some stability in their upbringing, particularly in their younger years. The responsibility of parents to provide this atmosphere for growing and developing young children is undeniable, but it is also undeniable that some parents are not able to adequately discharge that responsibility. That is the purpose of the bill.

The bill raises issues in which I have been interested for some time. Many years of work in the social welfare field, particularly with the Commonwealth Office of Child Care, sparked that interest. One example in the United Kingdom highlights how systems and safeguards put in place to care for children at risk can let you down. I instance the very sad case of a young child who was reunited with her family, but whose family was not able to adequately discharge its parental responsibilities. Because of a number of changes in welfare personnel in the local government body in England responsible for the care and protection of children, this child was never followed up adequately.

Welfare officers would visit, only to be told that the child had gone with his or her mother to the playground. When the next visit was due, a different social worker or student social worker would be in charge of the case file. The officers and the child never connected. Very sadly, the child had been locked in a bedroom in a council flat for three months. Small amounts of food and water were provided, and ultimately, the child died. The child had peeled wallpaper off the walls to try to get some sustenance from it and the gum. The parents had avoided being checked by welfare; the welfare system failed; that child's potential was snuffed out.

Although that is an extreme example, those sorts of things can happen anywhere. Systems fail. We must ensure that the highest priority is given to the welfare of children in families in which parents cannot adequately discharge their responsibilities. A submission received by the Minister during consultation on the second permanency planning bill demonstrates in a very down-to-earth way the dilemmas faced by families and carers when they get caught up in the system, and the impact this has on the children particularly. The submission described the experience of a young child who was first taken into care at two months of age and made a ward, initially for 12 months, with the intention of reuniting her with her mother at some time during that period.

The mother was only a young teenager and the baby, whom I will refer to as "Kylie", was removed from her care in late 1997 due to hygiene issues, weight loss associated with failure to thrive, threats to her physical safety, and being left with inappropriate care givers. Mothercraft nurses worked with Kylie's mother on parenting skills. Seven months later Kylie was reunited with her mother in a supervised residential placement. One week later Kylie was back with foster carers because her mother was unable to cope.

A mothercraft nurse again worked with Kylie's mother, and six months later she was returned to her mother's full-time care, one month short of the 12-month wardship order. Two-months later the department sought a 12-month supervision order, and it was made with the mother's consent. During this time foster carers continued to have contact and provided respite care when asked. Five months later Kylie's mother relinquished care of her to the department, because she was pregnant and had difficulties coping. Kylie was returned to foster carers in a voluntary care placement, with her mother's consent.

Only 15 days later Kylie's mother changed her mind and withdrew consent for voluntary placement, and Kylie was returned to her mother in May 1999. Later that month at a case conference a decision was taken to once again seek a wardship order for Kylie. The first court hearing date was August 1999. In September that year, she was made a ward until she reached 18 years of age, with her mother's consent, and an agreement was made for regular contact. In May the following year Kylie's mother made "abuse in care" allegations against the foster family. The allegations were not confirmed, but the relationship between the foster parents and Kylie's mother deteriorated to such an extent that all communication was handled through the department. Professional assessment suggested that Kylie met the diagnostic criteria for post traumatic stress disorder and reactive attachment disorder. Counselling, intensive play therapy and medication are now required to enable Kylie to

cope with her day-to-day life, while keeping in mind long-term issues of identity and personal history. This is not an atypical case. The following letter was written by foster carers:

In our situation we have been in court at least once in every calendar year since Kylie was born. She is not yet four. The latest rescission application from Kylie's mum delayed and prolonged the intensive play therapy program we are engaged in. The professional opinion was that it would be abusive to attempt to address Kylie's attachment issues with us, should her mother's application be successful.

The application was dropped, but not before it sucked up considerable resources in the way of time, energy and money. My husband had to take time off work to attend repeated dates, resulting in economic loss for our family.

There was a shift in focus for ourselves and the professionals involved. Instead of being available to support Kylie's placement, her District Officer was bogged down in report writing. Therapeutic issues and strategies to consolidate and maintain Kylie's placement took second place to the practicalities of fending off the court application.

To have things resolved with a sense of permanency, with clarification of roles and acknowledgement of the importance of all parties to Kylie's wellbeing, could only benefit everyone. We are Kylie's 'family of identity' and her primary attachment is to us. However, we are not her birth parents and as she grows they will be more and more important to her. Accepting the status quo would hopefully enable us all to respect the role each plays in her life and to complement each other, rather than feel threatened and competitive. This is my long held ideal.

Kylie's mother is a product of her own childhood. Kylie will be the third generation of this family to have significant involvement with DOCs. Providing secure, safe, nurturing substitute care with a degree of permanency may be the only way to end generational patterns of abuse and neglect. For some families the provision of repeated bouts of foster care only serves to enable and support their dysfunction.

In closing, I would like to express my thanks. The Permanency Planning Issues paper is the most hopeful document I have read recently. It expressed a positive, child focused direction for substitute care. Kylie is an extremely challenging child. Having hope for her future and for children like her enables us to continue our daily struggle.

I think we should all reflect carefully on the words contained in that letter from what are obviously very caring foster parents, people who recognise that there needs to be a continuing involvement in that child's life. They are ready to work together with professionals to try to remediate any damage that has been caused to that young child during disruptive periods of changing care in her early years. I think we should be grateful that we have foster carers in the system who are as thoughtful, positive and as prepared to deal with a child who has caused the family a loss of income through court appearances; who has probably caused them a lot of angst and would have put considerable strain on other family relationships. But they are focused on trying to ensure that they give that young girl the best possible future that they can. We should be very proud of those people and the role they play in the foster care process. The foster carers concluded their history of Kylie's experience in the care system with the following comment:

There needs to be some way that Kylie's case serves as an example and learning experience. Kylie and all the children who come into care should not be abused or neglected by the system meant to protect them.

This was one of the first submissions received after the release of the permanency planning discussion paper. This case and the hundreds like it that are seen by our welfare agencies on a regular basis have made a valuable contribution to the formation of this vital legislation. It is obvious that bringing permanency into our system for young people is a vital element in providing the type of support that will give these young people the chance to develop to their full potential. We, as legislators and as members of the general community, have a responsibility to all children in our community to try to allow them to have equal opportunities through life; and to try to allow them to maximise their potential in life. In some cases the only way we will be able to do that, to provide children with the stability and the nurturing environment in which they can achieve their full potential, is by introducing legislation such as this. For those reasons I commend the bill to the House.

**The Hon. IAN WEST** [9.45 p.m.]: I wish to add my support to the passage of the bill and note that it has elevated the rights of children in New South Wales to a historic degree. For some children the abuse or neglect that they experience as small children is just the beginning of a tragic life. As has been noted by a number of speakers in the debate, and in the other place, the Community Services Commission and the Bureau of Crime Statistics and Research have documented the drift of State wards into the juvenile justice system, finding that State wards are over-represented in the juvenile justice system.

Permanency is the key element needed to try to begin to overcome this trend. The bill defines what constitutes a permanent placement, and includes a broad range of options from restoration to the parents through to a sole parental responsibility order or adoption order. Permanency establishes the foundation for a child's healthy development. It provides safety and protection, a sense of identity, and validation of the children as important and valued persons. It provides stability and continuity of caregivers and an opportunity to learn and grow cognitively, physically and emotionally. It provides a protected custodial environment that is legally secure.

Permanency, as epitomised by a safe, stable relationship with a nurturing caregiver, allows these basic needs to be met. While the benefits of permanency are obvious, it can be an illusive thing to achieve. As has been noted elsewhere, there are occasions on which it is not uncommon for a child to be placed with some 15 to 20 different foster parents and in other types of arrangements—not necessarily foster parents, but a person up the road, a grandmother or grandfather, an uncle, aunt or cousin, or perhaps someone the parent met a few weeks ago.

It is clear that we need to do whatever we can to improve the experience of these children, to try to ensure that they receive a safe, secure, loving stable home life, that they develop their potential and become productive and responsible citizens. As the Minister for Community Services noted in the other place, what we are trying to do with this legislation is to stop the conveyor belt that often carries these children into juvenile justice institutions and an adult life of crime and antisocial behaviour. This is a problem not unique to New South Wales. Similar problems are being confronted in other countries, including Britain and the United States of America. Many societies are seeking to find the delicate balance between a child's urgent need for safety and permanency and the efforts of agencies and courts to help parents overcome the problems that result in child maltreatment or the making of the child's home unsafe or unhealthy.

Although that situation is faced by only a small number of children, it is an extremely difficult area. We must balance rights with the best interests of the child. While confronting similar problems, the bill does not seek to do all the things that have been done in other jurisdictions such as the United States of America or Great Britain. The bill is the result of an extensive consultation process with local communities and reflects the values of this jurisdiction. The bill now is truly reflective of almost two years of discussion and debate. The Minister has stated that she accepts the validity of the many issues that have been raised in the debate and believes that it is a better bill for this process. I hope and believe that I am not misquoting the Hon. Patricia Forsythe in saying that she would agree with the Minister's comments in this regard.

All stakeholders have been consulted and have had input into the final form and wording of the bill. The bill does not deal with easy decisions, but they are decisions that must be confronted. A failure to do this means that we fail these children. It means that they are condemned to a childhood adrift, without the sort of emotional security and stability that most others take for granted. The amendments attempt to strike a balance. The general presumption in current child protection law and practice is that children are almost always better off with their own parents and that removal, especially permanent removal, is an option of last resort in the most extreme cases.

There is no intention in the bill to change this fundamental principle. But the bill does aim to improve the experience of children who cannot safely return home. It directs courts to squarely confront decisions about whether there is a real prospect of safe return of the child to the care of the parents. The aim is that this will happen early enough to allow long-term planning for the child's future to take place before too much damage has already been done. This will avoid the situation of drift through multiple temporary placements, and multiple failed attempts at returning them to live with their parents, exposing them to further neglect and abuse.

In addition to these amendments to the proposed legislation, the Government has made a number of commitments to address the issues raised in relation to Aboriginal and Torres Strait Islander children. The Government remains committed to the Aboriginal child placement principle. It is expected that for cultural reasons adoption would rarely occur for Aboriginal children, and legal jurisdiction for adoption remains with the Supreme Court. The bill does not amend the current adoption legislation, which, as noted by the Parliamentary Secretary for Aboriginal Affairs, "virtually ensures that no Aboriginal child can be brought up outside his or her culture".

By the adoption legislation that this Government has put in place, any placement of an Aboriginal child with a non-Aboriginal family is only as a last resort, and only if the family can assure the Supreme Court that the child will be brought up in the knowledge of his or her own culture. And even then it will be only with the consent and approval of the relevant Aboriginal community. This bill is about things that most of us take for granted, the things that provide a foundation for future development—a home, a safe environment in which to simply be able to grow into ourselves—things that are absent from the lives of many children. I urge the Legislative Council to take this chance to give these kids a better future and support the bill. I commend the bill to the House.

**The Hon. JOHN TINGLE** [9.55 p.m.]: I will speak only briefly to the bill. I not only support it; I also welcome it, because in my opinion it is long overdue. As somebody who has been both an adoptive parent and a

foster parent I know just how difficult the situation can be and how complex it can be to try to adjust the lives of young children, and even babies, when they are no longer able to stay within what we consider to be the normal family environment. I have always believed that what children need most of all is stability, an assured continuum of affection, and the sort of safety and comfort that is quite necessary if a young personality is to grow up in a stable and balanced way.

I know there has been some concern that the bill has taken a little time to come to fruition. I actually welcome that because I think it is such an important bill that we needed to get it right. I would rather see the Minister take the time developing the bill through consultation, and with amendments, than simply trying to rush it into place hoping that when we patch it all together it will do something to make the whole system of permanency placing and foster care work a little better. I have known very small foster children of the age of four who cowered into a corner when they were taken home and who were quite terrified of what might happen to them next. These were kids who had been in a number of foster placements and who were obviously destined, because their parents kept on coming to claim them back and then putting them back into care, to be in and out of foster homes probably for all their young lives until they reached adulthood. I have often wondered what happened to some of those children.

We have come a long way. In the 1930s what was called the child welfare system was pretty dreadful and the child was merely a cipher, often sent to what was called a children's home where a number of children were being cared for by a house mother, if you like. Indeed, one of my cousins disappeared into the system in the middle of the 1930s. We lost contact with her completely; we have not seen her for more than 60 years. I have no idea whether she is still alive. We have come a long way from that situation and we are trying to make the system more humane, compassionate and centred around the only thing that matters: the future welfare and the happiness and health of the child.

It seems to me that one of the important things about this bill is, as other speakers have said, that it departs from the concept that a child is automatically better off in what is called its natural family. There are many natural families that are always going to be dysfunctional. Unfortunately, there are some people who, while they may have the physiological capacity to have children, do not have the psychological adjustment, the temperament, the capacity or the endurance to bring children up in the way they ought to be brought up. If we revert to the theory that this is all about the welfare, and even, if you like, the rights of the child or young adult, we have to put that view before the supposed theory that they should be with their birth parents or even with what we call their natural family.

I have studied some of these cases and there is increasing statistical evidence that in a de facto relationship when the child is the child of only one of the two people involved, there is an increasing incidence of abuse—physical, sexual and psychological abuse—of the child by the non-natural parent. In situations such as these, where the child is obviously in many cases being used as a weapon and is being manipulated, the welfare of the child demands that it be removed from that environment. The situation also demands that we should not automatically think that the child should go back into that environment.

The image is burnt into my mind of a little moppet of about four years with flaming red hair sitting on a bench outside the door of a Catholic orphanage, a children's home, with a very small packed suitcase beside her. At about one o'clock in the afternoon we went to the home to pick up young twins whose mother was ill, for short respite care. I asked a nun at the home who the little girl was and I was told that she had been sitting in the same position since 7 o'clock that morning waiting for people who were supposed to pick her up. They had not at that stage turned up. I said to the nun that we would take her, but I was told that we could not do that. That pretty little girl sat there determinedly looking at the road; she was quite sure that the people were coming to pick her up.

About three weeks later, when we took back to the orphanage the twins we had picked up, I asked the nun what happened to the little red-haired girl. I was told that she had sat waiting all day and would not come in for lunch. The little girl had said, "They are coming to get me." She sat with her teddy bear and her cardboard suitcase. That image burned into my mind. But the people never turned up. That child thought she was either going on a holiday or being put in permanent placement—probably the most exciting thing that had ever happened to her. Her parents had abandoned her, and I often wonder what happened to her. I wonder what that perception of rejection by people who did not bother to turn up did to that four-year-old girl. I wonder what sort of person she is today. That was 40 years ago.

This is an important bill and it contains some very important provisions, including that a child in placement be allowed to retain contact with what I call the extended family. I know of a great many cases in

which although the first-generation parents could not handle a child, the grandparents were valuable because they could restore the sense of family and provide the sort of stability that the child so badly needed. The Minister has gone to a great deal of trouble to sort out the culturally difficult situation with permanent removal of an Aboriginal or Torres Strait Islander child. We certainly do not want another lost generation accusation emanating from this legislation.

I welcome this bill. I know that amendments have been foreshadowed; some of which I believe are worthy of support and some are merely technicalities that we should not be concerned about. We need to be concerned about only one thing when we discuss this bill and decide how we are to vote on it: is it going to make life better for a lot of children who otherwise would simply go from hand to hand and wind up seriously injured personalities. This bill is important because it is not about the past or the present, it is about the future.

**Debate adjourned on motion by the Hon. Peter Primrose.**

### **ADJOURNMENT**

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [10.02 p.m.]: I move:

That this House do now adjourn.

### **GREEK ORTHODOX PARISH OF ST GEORGE FORTIETH ANNIVERSARY**

**The Hon. JAMES SAMIOS** [10.02 p.m.]: Last month members of the Greek Orthodox Parish of St George, Rose Bay, celebrated the fortieth anniversary of the consecration of the church in the presence of His Eminence Archbishop Stylianos, Primate of the Greek Orthodox Church in Australia. The first committee of the parish of Rose Bay entrusted with the building of the church of St George and its secular administration comprised the president, Dr D. G. Varvaressos; the vice president, Mr N. Gleeson; the secretary, Mr A. T. George; the treasurer, Mr M.G. Barbouttis; and committee members, C. Akon, P. Aroney, G. Conson, H. Patterson, A. Aristides, A. Carr, G. Limbers and G. S. Varvaressos. The first president of the younger set was Dr Nina Mistilis.

Presently the parish committee is chaired by the long-serving and able president Mr Peter Confos. The ladies auxiliary is headed by its president, the energetic Mrs Betty Gemenis. The church and parish of St George played an important role in underpinning the growth and progress of the Greek Orthodox archdiocese in Australia. A number of its members, including Michael Diamond and Tony Confos, served in the archdiocese as members of the mixed council and played an important role in the strategic planning that enabled the Greek Orthodox Church of Australia to deal with the pressing welfare and other social needs brought about by a steep increase in post-war migration. His Eminence Archbishop Stylianos stated:

It is indicative, though, that distinguished and generous Benefactors of the most important projects of our Church and community throughout Australia were, and are, members of this blessed Parish-Community, a fact which speaks of itself.

For all of this, we should be wholeheartedly grateful to the Very Reverend Father Miltiades Chryssavgis, for having been the driving force and inspiring spiritual head of this Church from its very beginning, together with the members of the successive Administrative Committees and Ladies' auxiliaries.

Under the shepherding of Reverend Father Miltiades Chryssavgis the church of St George celebrated the liturgy and other religious services, maintained a Sunday school and a Greek school, provided adult education classes and bible study, and catered to the needs of aged parishioners.

### **KANGAROO MEAT ITALIAN IMPORT BAN**

**The Hon. RICHARD JONES** [10.05 p.m.]: In the adjournment debate on Thursday 25 October the Deputy Leader of the Opposition made a series of allegations about my conduct in relation to an Australian kangaroo meat import ban imposed by the Italian Government. Those allegations, which reflected upon my integrity as a member of the House, were factually inaccurate and slanderous. The Deputy Leader of the Opposition claimed that I sent letters to European health Ministers last month stating that Australia could not guarantee that its kangaroo meat was free from disease. The Deputy Leader of the Opposition said he "did not realise that the Hon. Richard Jones spoke for Australia on such issues". I was accused of using the vulnerability of European countries battling mad cow disease and foot and mouth disease to exploit these problems for my personal political gain. The Deputy Leader of the Opposition has it wrong on all accounts.

The letter was sent to all health and agriculture Ministers in countries that import our kangaroo exports, including New Zealand, Brazil, Indonesia, the United States of America and Japan. Europe was not singled out. Quite simply, a minority of European countries were written to as a matter of course. I did not speak for Australia on this issue: Australia spoke for itself. The letter I wrote accompanied a report developed by the Australian State and Federal governments in collaboration with veterinary and wildlife professional bodies. The document is called "Australia's Preparedness for Emerging Wildlife Diseases—A Model for a National Wildlife Health Network" and it details the risks to human and animal health posed by Australian game meat products. I repeat: this is a document developed by government. This extremely important document states that despite numerous examples of the detrimental effects that disease can pose to wildlife populations and management operations, wildlife health is often designated as a low priority among conservation and environment departments. This policy of indifference cannot remain. The report states:

The recent series of diseases and mass mortalities in wild fauna, and emerging diseases of wildlife in Australia have demonstrated the growing importance of wildlife disease as threats to biodiversity, human health, agriculture and trade.

Yet across Australia there is a major gap in monitoring, surveillance and emergency response to diseases in wildlife. The report continues:

Current surveillance is ad hoc or post hoc, opportunistic or 'passive' with poor feedback of information to the field, including private veterinarians, wildlife carers, researchers and others.

The Government report acknowledges that, and states:

Experience with recent wildlife diseases, in particular, bat diseases and kangaroo choroid blindness has indicated that there has been duplication, lack of co-ordination and confusion with people sending samples to a variety of laboratories. In many instances better sample collection could have resulted in a much more rapid diagnosis. Without structure and policy field workers were left in a vacuum.

Dr John Auty, the then principal veterinarian of the Victorian Bureau of Animal Health, stated that kangaroo meat was "more susceptible than other meat to dangerous bacteria"—bacteria such as salmonella, *Clostridium* spp and *Escherichia coli*. Kangaroos are capable of harbouring the protozoan parasite, *Toxoplasma gondii*. In 1995 kangaroo steaks were identified as the most likely cause of multiple human cases of toxoplasmosis in Queensland. With regard to the Deputy Leader of the Opposition's incorrect allegation that I used my parliamentary position to satisfy my own personal interests to the detriment of the kangaroo industry, I point out that the health of the industry depends in part on its commercial viability. If people must eat kangaroo meat, governments should ensure that the meat is safe. At the moment they cannot. It is as simple and as logical as that. If anything, by drawing attention to the current inadequacies of the regime, I am helping to lift the industry's standards. The facts I have raised in relation to this matter are unequivocal.

The Deputy Leader of the Opposition's declaration that the kangaroo industry controls the kangaroo population and protects the rural environment is plainly absurd. Current harvesting practices are overseeing the wholesale destruction of the red kangaroo. Research presented by the University of New South Wales School of Biological Science shows that the recruitment rate of red kangaroos is at best 8 per cent per year, meaning that the current quota of 21 per cent as approved by the Minister is three times too high. Evidence has been presented by the industry that the red kangaroos being killed are getting younger and smaller each year. The rural environment is under far greater stress due to salinity, land clearing and the overzealous use of pesticides rather than native fauna. It is disappointing that the Deputy Leader of the Opposition should use the time of the House to make personal attacks rather than genuinely seek remedies for legitimate concerns about the scientific community. The Government has to address these concerns immediately.

### **LONG TIME COMING HOME BOOK LAUNCH**

**The Hon. JAN BURNSWOODS** [10.10 p.m.]: Last month I had the pleasure of attending a launch by the Premier of New South Wales of a book about Marjorie Woodrow entitled *Long Time Coming Home*. This book is the story of an Aboriginal woman who was removed from her family as a child and 68 years later found her mother living at the old Murrin Bridge settlement near Lake Cargelligo. Marjorie, to use her European name, found her mother in 1994. The book was researched from a variety of valuable sources, many from the State Records Authority, and was written by Dianne Decker, a member of the board of the authority, as recalled by Marjorie Woodrow. It is a wonderful example of collaboration between Marjorie Woodrow, Dianne Decker, family members scattered throughout western New South Wales and numerous other people, particularly from the Forbes district.

The book was published and made possible by a contribution from the New South Wales Centenary of Federation Committee through its Aboriginal history grant. I congratulate those involved in producing the book. Many more such books could be published. The book contains a mix of newspaper cuttings, fantastic photographs and records held by the State Records Authority, as well as recollections of numerous people from infamous institutions such as the Cootamundra Girls Home. The Premier sums up much of the book in his foreword. He said:

Marjorie was separated at the age of two. She did not see her mother again until 68 years later. The maltreatment she received from those charged with caring for her "welfare" will be sadly familiar to other Aboriginal men and women who were denied the love and guidance of their own families because of the policies of separation.

There is pain and sadness in this story but the strongest theme is courage. Courage and resilience and determination. Stories like Marjorie's are finally being told; Australians are finally listening. With goodwill and commitment, we may be on the verge of a new beginning.

The foreword from the Premier, his remarks on the occasion of the launch and the wonderful participation of so many members of Marjorie's extended family made the book launch a heartwarming function. I congratulate Marjorie, Dianne Decker and the Centenary of Federation Committee on their work in producing this book.

### KEMPSEY DISTRICT MENTAL HEALTH SERVICES

**The Hon. IAN COHEN** [10.13 p.m.]: I shall refer to a number of instances occurring in Kempsey. I have been sent a significant number of emails and information by Liz Franklin, a member of the Kempsey Mental Health Support Group. I met Liz during preparations for the Homelessness Summit. Liz is a dedicated member of the local community, attempting to do volunteer work in place of services that should be provided by the New South Wales Government. Four beds and two psychiatric trained nurses have been removed from the Kempsey District Hospital area and nothing has been done to replace them. Therefore, people with significant and major psychiatric problems are transported to Port Macquarie, which has a private hospital with no psychiatric infrastructure, to Coffs Harbour or to the John Hunter Hospital in Newcastle. It is time that the Minister considered funding for a dedicated psychiatric unit for Kempsey because the situation is critical. In an email dated 13 November Ms Franklin stated:

Our group has been told of another case in Kempsey where only token psychiatric treatment is being given. Y presented at her father's house in a psychotic condition. A doctor scheduled her to James Fletcher Hospital at Newcastle. Y was kept over the weekend, then sent home still hopelessly unstable. There are young children in the family and there is no way that the family can accommodate this sick person in their midst. The father has been unable to ascertain what if any treatment she has been given and what her ongoing care should be.

The situation in Kempsey, since the closure of our psychiatric ward at the hospital, should become a case study for what happens when mental health services are ripped away with no satisfactory alternatives put in place.

After the death of Eunice Benedek we suggested to you that the removal of the ward would have a huge effect on our community—we were patted on the head and sent away with assurances that MNCAHS would look after everything ...

We are still pointing out new cases, as the one above, where patients are being neglected, ferried around the State and only given token treatment, which is worse than useless, and causes disruption and heartache to patients and carers alike.

In another email dated 30 October Ms Franklin stated:

Things have moved quickly in the last 24 hours for the patient who has been trying to access psychiatric care in Kempsey for the past 8 weeks.

The patient was taken up to Kempsey Hospital by the police again. His mother discovered that he had been taken there by them three times and they have volunteered to drive him wherever is required to get scheduled and get treatment. Again the hospital let him go saying that nothing is wrong with him and "we should wait and see".

The patient harassed his mother at work. She has also not been able to live at home for the past three days because of the patient's irrationality, abuse, noise—all the usual symptoms of a severe schizophrenic episode, which the local hospital refuses to acknowledge ...

The mother received a phone call at work from new case manager who suggested that mother takes out an AVO to remove patient from the house. Mother declined as she did not want to put son out on the street and she was able to stay with relatives nearby.

Patient arrived at mother's workplace and created a disturbance. The police were called but as they did not arrive promptly, and the patient was demanding money, the mother decided to take him to the nearest ATM and withdrew \$20 for him.

Mother asked patient if he would go to see Dr Holmes, the psychiatrist, who had just returned from holiday. Patient readily agreed and walked along the street brandishing a decorative Japanese knife. Due to cancellation, Dr Holmes was able to see our

patient who agreed to have an injection of Modecate and to take Valium. Dr Holmes advised mother that it would take two weeks before the Modecate kicked in properly. He made a forward booking for follow up treatment but advised mother that in order for the patient to attend his twice weekly morning clinic at the hospital, the patient would have to be referred by Community Health or A&E if there was an earlier problem.

Mother went back to work and arranged with Police for an AVO to prevent patient attending her workplace.

Patient walked to Centrelink office at West Kempsey, made a huge fuss, demanded money, threatened to kill his mother, threatened Centrelink staff. Police were called and he was arrested and charged. Mother was informed of situation and was in a terrible state when I called her at 3.30pm ...

I received a call from Margaret Holmes on another matter and asked if she was aware of the developments since the patient had seen her husband. She passed on the message to Dr Holmes, who immediately rang the police and organised with the doctor on duty at the hospital Emergency for the patient to be scheduled at Newcastle. To the best of my knowledge, if there have been no hitches in the meantime, this has happened.

*[Time expired.]*

## UNFAIR DISMISSAL LAWS

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [10.18 p.m.]: As the business community of New South Wales, in particular small business, continues to struggle with the escalation in their workers compensation premiums under the Carr Government, it is now looking for answers to other issues that confront it. As members of the Coalition travel throughout the State we are continually confronted with the problems being experienced by business, such as payroll tax, land tax and public liability. The Coalition is already on the record with proposed reforms to some of these areas. We continue to utilise this time effectively in seeking the views of all stakeholders, to raise possible future areas of reform and to use this discussion as the springboard to engage our constituency as we finalise our policy platform for the 2003 State election. One such issue relates to the continuing concern that exists with respect to unfair dismissal laws in New South Wales.

Honourable members may be aware that the unfair dismissal laws in this State date back some 20 years. In 1982 the Wran Labor Government introduced the Employment Protection Act, which provided an exemption to unfair dismissal provisions for those who employed 15 workers or fewer. Unless the Minister for Industrial Relations is deaf—and I do not believe he is—I have no doubt that when he meets employers throughout New South Wales he hears case after case about employers being brought before the court to answer unfounded unfair dismissal claims. I put on record at the outset that we need laws to protect employees from unfair dismissal actions, but it appears to the Opposition that there must be some balance with respect to certain aspects of the law.

Unfair dismissal laws are not designed to penalise an employer who has unfairly dismissed an employee. The legislation exists to ensure that when an employee has been unfairly dismissed a financial payment of up to a maximum of six months salary is provided to assist that employee while he or she endeavours to secure new work. I recently publicly released a discussion paper entitled "A Fair Go for All—A Discussion Paper on Unfair Dismissals". It is designed to highlight some of the issues of concern that employers have raised with me over the past 12 months and to engender discussion with interested parties about the implications of potential reforms. Employers believe overwhelmingly that the current regime encourages the making of frivolous or vexatious complaints by former employees and that, even when complaints are exposed in court as being frivolous, the applications are simply dismissed. That is all that happens. Even when matters are dismissed and the employers win, the satisfaction of being recognised by the court as having managed their businesses properly is quickly lost when they are confronted with the legal costs of successfully defending their innocence.

The sour taste that the growing number of cases like this leaves in employers' mouths has a further negative impact—and this time the losers are the unemployed, who are desperate for a job. Time and time again I hear about employers who, following an unsubstantiated claim, simply refuse to take on new employees. The discussion paper raises issues such as exemptions for small business and the application of cost orders for frivolous or vexatious complaints as a means of addressing some of the employers' major concerns. The cost of defending an unfair dismissal claim has compelled many employers to pay a dismissed employee extra money simply to make the matter go away. It is cheaper to pay the employee a few extra thousand dollars and get rid of the problem than to fight it, irrespective of how false and unfounded the claims may be. Employers know the moment they receive an unfair dismissal claim that it will cost them one way or the other.

Another way of possibly reducing some of the costs of having these matters heard through the Industrial Relations Commission [IRC] would be allowing them to be heard through the Local Court. The Local



Court currently hears civil matters involving sums of up to \$40,000, including contracts and actions in tort. The discussion paper examines the possibility of unfair dismissal cases being heard in the Local Court, and thus freeing IRC commissioners to use their expertise and knowledge to hear the more complicated and involved matters designed to be heard in superior courts. We hear criticisms of the Local Court from time to time, but I believe that all honourable members would agree that the level of service and professionalism provided by Local Court staff has stood this State's justice system in good stead. A reform such as this would merely be an extension of the work that this court already performs.

The discussion paper also raises the issue of a probationary period. Current legislation provides for a probationary period of three months or less, with provision for an unspecified time if that is reasonable. I have spoken to employers and employees about this three-month period and many have said that we must recognise that jobs today often require a level of expertise and knowledge that takes more than three months to gain. In the paper I discussed the possibility of extending this period to six months, with lesser periods decided by means of a written agreement between employers and employees. The idea is to ensure that employees can access skills training and that employers have a real chance of assessing a worker's suitability for the job. I seek leave to table the paper entitled "A Fair Go for All—A Discussion Paper on Unfair Dismissals".

**Leave not granted.**

### **ANTI-GLOBALISATION DEMONSTRATION**

**The Hon. PETER PRIMROSE** [10.23 p.m.]: More than 2,000 protesters marched in Sydney's central business district yesterday to demonstrate against globalisation. The demonstration coincided with the International Metalworkers Federation Congress at Darling Harbour, and the marchers included representatives of unions from 80 countries. The protesters marched peacefully from Darling Harbour to Martin Place, calling for an alternative approach to globalisation. The Australian Manufacturing Workers Union New South Wales Metal's Secretary, Mr John Parkin, said that those most at risk—women and children and those without unions—were bearing the brunt of globalisation. He told the rally:

They are the people who the global corporations try to persuade they are working for the benefit of. They say "Let us into underdeveloped countries because if we bring our company with us, if we bring our profits with us, it can only make the country a better place".

And it's a lie, it's a lie because what they mean is "We want to use your cheap labour, we want to have your children, we want to have your women working 24 hours a day in slave labour conditions".

That's what globalisation is about ... that's the real meaning of corporate globalisation.

Communications, Electrical and Plumbing Union National Secretary, Peter Tighe, called on all countries to embrace the core labour standards set out by the International Labour Organisation. He said that members of his union were already losing jobs to countries without unions. He told the rally:

Our people who work in call centres are now being replaced by workers who work in call centres throughout Asia ... It's as easy as getting hooked into a communication link to a foreign country and having your work and conditions taken offshore.

I congratulate all those involved in the rally and all those involved in the International Metalworkers Federation Congress.

### **SUPERANNUATION FUNDS**

**The Hon. DOUG MOPPETT** [10.26 p.m.]: I do not believe the House should adjourn tonight before considering the deplorable plight of many workers employed in industries that provide a series of short-term engagements that perhaps amount to permanent employment, but not with the same employer. A constituent from Coonamble approached me to explain the situation that he faced when he retired and tried to withdraw the superannuation owed to him as a result of employment-related superannuation payments. This gentleman is a member of a well-respected family and is entitled to claim the proud title of "professional shearar". He worked hard all his life and had been a member of a superannuation fund since 1995. Throughout his entire period of employment he had contributed, and his employers had made contributions on his behalf, to the fund. My constituent told me that in his final year of employment the employer contributions made on his behalf amounted to \$2,040. However, when he went to withdraw those funds invested on his behalf and paid in a series of cheques, there was only \$724.97. That is all he received for almost continuous employment since 1995.

We all know that there are costs involved with crediting small amounts to superannuation funds, but it reflects badly on the current system and the administration of those funds when one considers that that gentleman would have been far better off if the money had simply been paid into an interest-bearing bank account. I am beholden to my constituent to take up this matter on his behalf with the appropriate authorities. However, I would like to think I have the support of all honourable members in condemning the current arrangements that apply to employees in industries such as the shearing industry, where the terms of employment with an individual employer may be as short as a week or even a day. Those employers are required to make superannuation contributions in the amount of 8 per cent of wages paid to workers, yet the yield from these funds is absolutely pitiful. It is a disgrace that this man, at 70 years of age, having made such a substantial contribution towards augmenting his resources in retirement, has been so shabbily dealt with.

**The Hon. Michael Egan:** Which fund is this?

**The Hon. DOUG MOPPETT:** The payments were made into a fund called Australian Super. It is an employment-based fund and one of the few approved for such payments. It is not my place on this occasion to blame it for maladministration. I believe that this is a common practice throughout the superannuation industry when funds receive payments in small amounts related to short-term employment. I hope that the Treasurer will take up this issue as a matter of personal interest on behalf of the many New South Wales employees who are affected.

### **NORTH COAST SUGAR MILL INDUSTRIAL DISPUTE**

**Ms LEE RHIANNON** [10.30 p.m.]: I inform the House of the growing support from unions, community groups and Greens organisations around the country for the 350 North Coast sugar mill workers who last week were locked out indefinitely by their employer. The workers have been locked out because they refuse to work on Christmas Day. How unAustralian! How mean can you get? The actions of these Scrooge mill owners, which resulted in a shutdown of mill operations, have not yet brought hardship to the workers. The employer's actions are making it difficult for North Coast sugarcane farmers. If the lockout continues for much longer the local economy will certainly suffer. At the moment the mill workers are in Sydney attending a series of meetings.

The Construction and General Division of the Construction, Forestry, Mining and Energy Union [CFMEU] is taking them onto various building sites where workers are giving generously to assist these locked-out mill workers. We are only six weeks away from Christmas and because these mill workers refuse to work on Christmas Day their employer is making them suffer. These are mean actions, particularly striking an area of rural New South Wales that already is doing it hard. The Greens commend CFMEU State Secretary, Andrew Ferguson, who has pledged to raise this issue to a national level to highlight the rottenness of the mill's management and to ensure that locked-out workers are financially supported by other Australians while they fight for their rights on the job. Mr Ferguson said:

People around the country need to hear how this management team is attempting to starve our members into submission and how they are quite prepared to financially ruin north coast sugarcane farmers and devastate the local economy to achieve this.

I look forward to joining other members of the community in speaking at some of the stop-work meetings at which we will hear a report from the mill workers who are doing it hard but fighting a fantastic battle for their basic rights and the rights of all workers.

*[Time for debate expired.]*

**Motion agreed to.**

**House adjourned at 10.32 p.m. until Thursday 15 November 2001 at 2.30 p.m.**

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