LEGISLATIVE COUNCIL

Wednesday 28 November 2001

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

The President offered the Prayers.

WORKERS COMPENSATION LEGISLATION FURTHER AMENDMENT BILL

Bill received and read a first time.

Motion by the Hon. John Della Bosca 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.

ASSENT TO BILLS

Assent to the following bills reported:

Courts Legislation Amendment Bill
Motor Trade Legislation Amendment Bill

BUSINESS OF THE HOUSE

Precedence of Business

Motion by the Hon. Michael Egan agreed to:

That on Thursday 29 November 2001 General Business take precedence of Government Business until 5.00 p.m.

TABLING OF PAPERS

The Hon. Michael Costa tabled the following annual reports for the year ended 30 June 2001:

(1) Annual Reports (Departments) Act 1985—

- (a) Department of Juvenile Justice
- (b) Office of the Director of Public Prosecutions
- (c) Parliamentary Counsel's Office

(2) Annual Reports (Statutory Bodies) Act 1984—

- (a) Bicentennial Park Trust
- (b) Lord Howe Island Board
- (c) Trustees of the Parliamentary Contributory Superannuation Fund
- (d) Zoological Parks Board

(3) Community Justice Centres Act 1983—Report of Community Justice Centres

(4) Legal Profession Act 1987—Report of New South Wales Bar Association

(5) Privacy and Personal Information Protection Act 1998—Report of Privacy New South Wales

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**.

Gay and Lesbian Mardi Gras

Petition praying that the annual Gay and Lesbian Mardi Gras be reorganised on a State and national level with a view to producing a multicultural ethnic parade to show the diversities of ethnicity, received from **Reverend the Hon. Fred Nile**.

Council Pounds Animal Protection

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

Wildlife as Pets

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

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

Debate resumed from 24 October.

Reverend the Hon. FRED NILE [11.10 a.m.]: On the last occasion I was concluding my remarks on the disallowance of the Passenger Transport (Private Hire Vehicle Services) Regulation 2001. I adjourned that debate to allow the Government time to return to the House with some propositions, particularly with regard to compensation. I am very pleased that the Minister has announced publicly, and has advised the crossbench of, the establishment of a hardship assessment panel that will comprise the Hon. Milton Morris, a former Coalition Minister for Transport, and the Hon. Joe Riordan, the Chairman of WorkCover New South Wales and a former Minister in the Whitlam Government, who has held various responsible positions and has been an active Government member.

As members know, both of those men have long and distinguished backgrounds and expertise in the transport industry. The Minister has advised that Mr Morris and Mr Riordan will advertise and receive written applications from hire car operators who are holders of a perpetual hire car licence. They will then make recommendations on appropriate ex gratia payments or other forms of assistance to the Director-General of the Department of Transport.

It is difficult to know whether the hardship assessment panel will satisfy the people who have been affected by changes to the value of licences, namely the hire car operators. However, the panel should be given a fair opportunity to perform its functions and to further investigate matters when required. I understand that the disallowance of the regulation at this point could have a negative impact on the very people we are seeking to assist, in that there would then be no regulation of the industry. It would also mean that there would be no protection for the existing hire car operators. My concern relates to two points: first, the hardship assessment panel; and second, whether the disallowance of the regulation will have a negative effect on the very people we are seeking to assist.

The Hon. IAN COHEN [11.13 a.m.]: The Greens oppose the motion moved by the Opposition. The Government intends to halve the lease fee of government-owned hire car plates from $16,100 to $8,235 per annum. This accounts for approximately one-third of the industry. In its 1999 report into the hire car industry the Independent Pricing and Regulatory Tribunal [IPART] recommended that the licence fee be reduced to between $100 and $1,500. The privately owned plate industry claims that the reduction in licence fee will result in an expected halving in the value of privately owned plates. This is the industry's main concern about the regulation. Incidentally, the disallowance will not impact on the lease fee at all. According to a briefing note supplied to crossbenchers:

> The intent of the motion appears to have been to reverse the recent changes to the Hire Car Industry and in particular the reduction in the cost of hire car licence plates. However, the disallowance motion does not have that effect.

However, the disallowance of the regulation would leave the entire industry unregulated. In particular, it would leave the industry with no accreditation system, there would be no standards for drivers, and no bookings would be required, allowing hire car operators to behave like taxi operators.

The Hon. Doug Moppett: It sounds like a standard government response.

The Hon. IAN COHEN: It is a Greens response. Licence plates are currently valued at between $140,000 and $165,000. There are 332 privately held perpetual hire car plates. All except 22 licences were provided free by the Government many years ago. In 1998 the Government released 20 plates, and they sold for an average price of $150,000 at a government auction. Since 1984 there have been five reports into the industry. The two most recent reports, by the New South Wales Ombudsman and IPART, both recommended reform to the industry. In particular, they recommended that the industry be opened up to competition so that service to customers could be improved. The Government's decision comes as a result of those reports.

Adel Eldahaby is the owner of five hire car plates. He bought one of the plates from a government auction in October 1998 for $150,000. In order to obtain his plates he has borrowed money from two finance companies, and he has a guarantee on his house and a bill of sale on the plates. He still owes $645,000 on the plates. He estimates that their value has been reduced from $160,000 to $70,000. In a letter to the Greens Mr Eldahaby says:

> My payments every month is over $7,000 and I only collect $6000 from the plates every month—and the rest of the money is from my income.
>
> I have nearly lost my house because of the situation … I have a lot of financial problems.

I am aware that many people in small business find that profit levels are not as high as expected. Given the considerable number of plates Mr Eldahaby has, I wonder whether under those circumstances it would be more appropriate for him to cut his losses and perhaps look at selling at least some of the plates. The Greens have received a number of similar letters outlining individual hardship cases. I understand the plight of these people, but people throughout the community, particularly in small business, face the same problem. The present difficult economic circumstances, coupled with recent tragic events, means that these industries do not have the level of custom that was anticipated. However, that is not a matter that the Government should necessarily be held responsible for.

The industry is concerned that if the regulation of vehicle, driver and service standards is relaxed, the quality of the service will be reduced. Notwithstanding that concern, the industry appears to be unconcerned that the disallowance would leave the entire industry unregulated. On the upside, consumers should benefit by more and cheaper plates being on the market. A reduction in outlay and capital investment should see the price of plates fall. As Riad Ibrahim said in his letter to crossbenchers, "The Hire Car customers are the upper-class users of the public transport sector." The service generally includes a quality chauffeur, a luxurious vehicle, and a relaxed, comfortable and safe atmosphere of travel. I say that, although I have never been in a hire car. Should not this be a right for people other than the extremely wealthy?

It is important to separate the owners of licence plates, the operators of those plates, and the clientele who are serviced by the luxury hire car industry. The Greens believe in the principle of equity—therefore we have concerns about compensation—and the principle that all members of society should have equal access to services. Clearly, this industry currently caters to a particular section of our society: the upper class and the wealthy. The Greens cannot lend support to an industry that only favours and services that section of society. Whilst we support public transport—and hire cars are said to be a form of public transport—this industry is available only to those who can afford it. The Greens have a problem with this on the basis of equity and fairness. In our view, all services should be equally available regardless of one's class, status and income.

Many of the examples given to crossbenchers involve hire car plate owners losing substantial sums of money. Some individuals have invested thousands of dollars in purchasing plates, and the market value was set by the Government at the 1998 auction, when 20 new plates were released. Whilst the Greens have some sympathy for those who are about to lose thousands of dollars from the value of their plates, many have seen their licence plate investments grow over the last few years. At one stage these licence plates were supplied to individuals free of charge, which resulted in historical windfall profits for them, and that is accepted. When that type of profit occurs in an industry, certain losses must also be accepted.

Some licence plate operators will suffer a decrease in their previously inflated licence plate valuation. Some owners are simply seeing a so-called "sharemarket crash" in their particular stock, the hire car licence plate. Others have invested their lifetime savings, and some have used their houses as guarantees. This has proved to be a bad investment decision in this instance. This is not unusual in investment decisions. But despite that, the Greens do not like to see people displaced or lose their home due to bad investment decisions.

The Government has proposed a hire car hardship panel that will consider written claims of hardship from hire car operators who are the holders of a perpetual hire car licence. The Greens welcome this move and believe that the Government has acted fairly in this regard. I hope the hardship panel can assist those in real need, but I have a concern that such funds would be better spent assisting unemployed people who can barely afford the bus or train fare to look for a job.

The Hon. IAN MACDONALD (Parliamentary Secretary) [12.20 p.m.]: This Opposition is certainly a contradictory mob. They are inconsistent in their various approaches on some of these issues, but in this instance they are incredibly inconsistent. For many years they have supported the removal of unnecessary red tape that hampers small business. It has always seemed strange and inconsistent to me that, for instance, at the airport people have had complete freedom of choice about the model, make and year of the car they wanted to rent. Yet with a limousine service, the type of car available to hire has always been heavily prescribed and restricted by Department of Transport regulations. There have been many reports over a long period that this was contrary to the interests of customers and prospective entrants into the hire car industry—a great restraint of trade. That is why the Government stands by these reforms of the industry as a means of achieving an acceptable solution to the current impasse.

The Opposition, on the other hand, has again demonstrated its lack of understanding of parliamentary process. This disallowance motion not only is misguided but also is self defeating. This disallowance would not have the effect of reversing the Government's decision on licence fees. That was an administrative decision taken by the Director-General of Transport under section 39H of the Passenger Transport Act 1990, not under this regulation. So, disallowing this regulation would not have the result that the Opposition seeks.

Obviously, the Leader of the Opposition in this House is not familiar with the operations of the Subordinate Legislation Act 1989. I will give him an analysis of how that Act would impact on this disallowance. If the Leader of the Opposition knew about the Subordinate Legislation Act 1989 he would realise two things. First, due to the automatic repeal provision in section 10, the regulation that this regulation replaced actually expired on the day before this regulation came into effect. That is a profound oversight on the part of the Leader of the Opposition.

Second, under section 8 of the Act, a disallowed statutory rule cannot be remade, and a substantially similar rule cannot be made, within four months of the disallowance. That means that if this regulation were to be disallowed, the industry would be left almost completely unregulated. There would be no protection for hire car operators, and the public would not be protected from unscrupulous and illegal operators. The hire car industry would be open to fly-by-nighters and there would be no way to protect honest and industrious people within the industry.

If the Hon. John Jobling wants me to go over the complexities of the regulation again I will gladly do so. There could be conflict between hire cars and taxis as each touted for business against the other. Conflicts cannot be ruled out. That would undermine standards in the industry and leave licences effectively worthless. Disallowing the regulation would not impact on licence fees. Let me repeat: they are not set by regulation. The irresponsible approach of the Opposition benefits nobody, especially the very people it claims to support. Judging from the performance of the Leader of the Opposition today, with his constant carping and interjecting, this must be very upsetting for him. I guess he has misunderstood how the Parliament operates. Whereas in his other life he used to get his way by using a telephone book, if he wants to get his way in this place he has to use words, but he is not really capable of that.

The heart of the concerns of the Opposition appears to be compensation for the hire car industry. The Government has never ruled out compensation but it has ruled out a blanket compensation package, which would be an irresponsible use of public money. A blanket compensation package is not appropriate because the reforms do not reduce the ability of current licence holders to continue to provide hire car services, and nor will they prevent hire car plate owners from trading or earning a living. They will just have to do so in a competitive market. Licence owners have known for many years that changes were proposed.

Hire car plate owners have engaged in a commercial decision to buy and sell hire car plates, and it is not justifiable to use taxpayers' funds to compensate individuals or organisations who purchased licences as

investments. The majority of plates were originally given away free and their owners have benefited from operating in a monopoly market up until now. Like any other investment, licences are subject to rises and falls. The industry has been enjoying a rate of return on plates of approximately 14 per cent per annum. That is a very healthy rate of return, compared with average gross returns on Australian shares of 13.5 per cent per annum, about which I have just learnt, 9.3 per cent on rental property, or 5.5 per cent on cash deposits during the past 10 years. Even the Leader of the Opposition has to agree that 14 per cent is above the national average for returns to licence holders. That is because the hire car industry has been a protected closed shop for so long. Even with the changes, rates of return will still be approximately 6 per cent.

Until such time as plates are traded in a genuine transaction the effect of policy changes on their value, if any, simply will not be known. The cases of hardship about which we have heard are, of course, of concern to the Government. These reforms have been discussed and anticipated for many years, and the Minister for Transport has announced the formation of a Hardship Assessment Panel for the hire car industry to consider cases of financial hardship that may result from these changes. He has appointed the Hon. Milton Morris and the Hon. Joe Riordan as members of the panel. As honourable members would be aware, Milton Morris was the longest serving transport Minister in the history of New South Wales, under the Askin, Lewis and Willis Coalition governments of the 1960s and 1970s. Joe Riordan was a Minister in the Whitlam Government and is now chairman of WorkCover New South Wales. Both men have long and distinguished backgrounds and expertise in the transport industry.

The Minister has issued Mr Morris and Mr Riordan with terms of reference for assessing written applications from hire car operators who are holders of a perpetual hire car licence. Mr Morris and Mr Riordan will make recommendations on appropriate ex gratia payments or other forms of assistance to the Director-General of the Department of Transport. The Government has listened carefully to industry claims that some operators are suffering financial hardship and it agrees that these claims should not go unheard. The Hardship Assessment Panel is a fair and equitable process for assessing compensation claims. That has been indicated by a number of honourable members in their contributions today.

I will now turn to the substance of why the Government is reforming the regulation of this industry. They are necessary reforms arising from a series of five reports, the first of which was released as far back as 1984, into this industry. The most recent reports came from the New South Wales Ombudsman and the Independent Pricing and Regulatory Tribunal. Both reports urged reforms to open up the industry to competition and to improve service to the consumer. Both suggested that this be achieved by reducing the short-term licence fee. This was formerly $16,100 per year. IPART suggested it be between $100 and $1,500. The Government has settled on $8,235. That is not an arbitrary figure. It is based on a well-established formula for setting government licensing fees. The Government has done this to balance the industry's continuing viability against the recommendation of the IPART report.

The Government's reforms left restrictions on age limits and types of hire cars to allow all modern luxury cars with a wheelbase of at least 2,800 millimetres to become hire cars. Winning cars will also be deregulated so that they are not required to undertake annual free licence renewals, although operator accreditation is still required. Now, oversize stretch limousines will also be allowed to be used for tourist services. The regulation of the industry will be simplified, which will actually benefit the industry. Almost any luxury car can be used as a hire car. This will allow for innovation and increased sales.

The new policy also provides for more certainty to the industry as the licence fee structure will be fixed until 2003. There will be a review of the industry in 2003 to determine the impact of the changes. The development of these reforms from the IPART report involved extensive consultation with industry stakeholders, the Ombudsman and the community. The reforms were discussed with the Motor Traders Association and other stakeholder groups, including the Chauffeured Limousine Association of New South Wales on 6 July this year. The draft reforms were advertised for community comment. When the Minister received the revised proposals he met with a deputation from the Motor Traders Association on 5 September 2001 to further discuss the issue. The reform package was announced on 13 September. No-one can claim that, after months of consultation and years of anticipation, the industry was not properly consulted on the changes. The industry has been totally consulted on these changes.

Another aspect that confronts the House is that the cost of full compensation is high. If blanket compensation were entered into, the cost would easily rise to several million dollars—perhaps $2 million or even $3 million. This is a conservative estimate. This is to be contrasted with the Government's responsible approach in establishing the Hardship Assessment Panel. This means that people who have made a case for

compensation will receive it—not blanket compensation, which would be a blatant potential waste of taxpayers' money. There is no cap on the compensation determined by the panel, but people would need to make their case. It is a completely reasonable approach to require people to go through the panel and have their individual cases assessed appropriately. In conclusion, I should emphasise that this misguided Opposition motion, if passed, would send the industry into chaos. It is irresponsible and will serve only to hurt the industry, not help it. The only responsible thing for this House to do, knowing the consequences, is to oppose this pointless motion.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.33 a.m.], in reply: I am mindful of the contributions made by honourable members. The most recent of those contributions was made by the Hon. Ian Macdonald, who tried to portray to the House that he has an interest in, even a passion for, the hire car industry—apart from being a great user of the hire car industry in his travels around country areas of New South Wales. I can just see him being driven through towns like Young, waving at the cherry pickers from the back seat of the hire car, his hand held in a manner intimating to the pickers that he has an interest in the people of country New South Wales. He does not. Similarly, the Hon. Ian Macdonald has no interest in the people in the hire car industry of this State. His contribution today was almost entirely from a script that was prepared by the department. It was not a contribution that the honourable member could have made without the notes that were provided for him.

Had he spent any time speaking with representatives of the hire car industry, he would have heard first hand about the difficulty of the action being taken by the Opposition and that the industry regards that action as necessary to save the livelihood of those involved in the industry. The Coalition recognises that crossbench members are concerned about what may happen following disallowance of the regulation. I draw the attention of honourable members to the fact that the most recent debate in this House on this matter took place on 24 October, more than a month ago. In the meantime the Government has had a continual stream of representations made to it, as well as questions raised by crossbench members, and therefore is fully aware of what is intended by the Opposition and the industry if the disallowance motion is successful. The Government has had an opportunity to prepare itself for events should this disallowance motion be carried by this Chamber.

What would the Government's action be? By the end of the day it would simply reintroduce the previous regulation that protected the industry. It would not be throwing those involved in the industry to the wolves. It would not leave the industry totally unregulated. By the end of today the Government would have reintroduced the former regulation, which addressed many of the concerns that have been raised by honourable members. Those concerns include protecting the industry from sharks and protecting consumers from being ripped off. Instead, the Government has suggested that in the few hours before the end of the day our whole world will cave in. The industry recognises that something needs to be done to protect the livelihoods of those involved in the industry. That is why the Opposition has taken this strong move to address the issues.

In relation to the Hire Car Assessment Panel, the industry has written to the Opposition and to crossbench members. The industry probably has written to the Government, but I suspect it will not have written to the Hon. Ian Macdonald because, firstly, the industry would know that he has no understanding of the issues that it would raise and, secondly, that he does not care about the issues that it would raise with him. Those matters are not within his radar. One can easily work that out from listening to the contribution that he made earlier. One issue raised by the industry is the lack of an appeal process from decisions of the Hire Car Assessment Panel. What recourse have those who feel that a panel decision is not in their best interests? There is no provision whatsoever for such an appeal.

The industry also raised questions about the current qualifications of panel members. The Government placed considerable reliance on the fact that the Hon. Milton Morris, a former Coalition member and a well-respected former Minister, is one member of the panel, along with Mr Joe Riordan. Irrespective of his contribution to the Federal Parliament, the fact is that Joe Riordan left that Parliament in 1975. Milton Morris left State Parliament in 1980. So both were members of Parliament last century. Neither of those former members has been involved with Parliament in a legislative sense since the last century.

I might mention that during that last century was a period in which horses and carts wended their way down Macquarie Street. We are talking about some time ago. Milton Morris left Parliament in 1980. The Hon. Ian Macdonald suggested that Milton Morris is fully up-to-date with what is occurring in the hire car industry because of his previous experience with transport matters up to 1980. I am sure Milton Morris made a fantastic contribution whilst I was at school in this State, but since I left school Milton Morris has not been a member of Parliament, and Joe Riordan left Parliament at around the time Malcolm Fraser became Prime Minister.

I suspect some people in the hire car industry today were not even born when Milton Morris and Joe Riordan were in Parliament. The Government is drawing a long bow to suggest that they are right up to speed with what is happening. Both former members of Parliament can make a contribution in other ways, to both this industry and others, but the Government should not put weight on their current understanding of issues affecting the industry. The industry has also raised concerns about loss factors, which arise when the terms provide that payment of compensation to a claimant is contingent upon demonstration not only of loss but poor financial position, presumably as a direct result of that loss. As the industry has told both the Opposition and the crossbench, that provision is most onerous and discriminatory and is difficult to address.

For the Opposition to be accused of being misguided is unfair and incorrect. We have been confronted with the Government's lack of preparedness to sit down with the industry to try to resolve serious issues. We are not talking about a multimillion-dollar industry, we are talking about mum and dad operators who have invested their savings in hire car licences, and about their ability to continue to operate. The Opposition has put on the record the concerns of many individuals and mum and dad operators, small business people who will be unable to meet their repayments because the market will drop around them. Many of them have loans and many of them will find it incredibly difficult to meet the cost of maintaining those loans. The Opposition is committed to ensuring that those voices are heard, whereas the Government wants to wipe them away as misguided challenges to what it has put forward.

The Opposition believes that its tough stance is the only way to force the Government to recognise that it has made a wrong call in relation to the hire car industry. The Opposition also believes strongly that if this disallowance motion is successful this morning, by the end of the afternoon the Government will have reinitiated the previous regulation to provide the necessary safeguards that many honourable members have raised during this debate. This is a significant step, but it is not one we take lightly. The Government needs to go back to the drawing board to protect industry operators who, up to this moment, have been ignored by it.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 19

Mr Breen	Mr Gay	Mr Ryan
Dr Chesterfield-Evans	Mr Harwin	Mrs Sham-Ho
Mr Colless	Mr R. S. L. Jones	Dr Wong
Mr Corbett	Mr Lynn	
Mrs Forsythe	Mr Oldfield	*Tellers,*
Mr Gallacher	Mr Pearce	Mr Jobling
Miss Gardiner	Dr Pezzutti	Mr Moppett

Noes, 19

Ms Burnswoods	Mr M. I. Jones	Mr Tingle
Mr Cohen	Mr Kelly	Mr Tsang
Mr Costa	Mr Macdonald	Mr West
Mr Della Bosca	Reverend Nile	
Mr Dyer	Ms Rhiannon	*Tellers,*
Mr Egan	Ms Saffin	Ms Fazio
Mr Hatzistergos	Ms Tebbutt	Mr Primrose

Pair

Mr Samios Mr Obeid

The PRESIDENT: Order! There being 19 ayes and 19 noes, there is an equality of votes. Therefore, I cast my vote with the noes in order to uphold the status quo, which is that the regulation shall remain.

Motion negatived.

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

Second Reading

Debate resumed from 14 November.

The Hon. DOUG MOPPETT [11.51 a.m.]: I am reminded of the restrained and sensitive contribution to the debate made by the Hon. Patricia Forsythe at the outset, in which she stated the position of the Opposition clearly and eloquently. I simply want to add a few personal remarks and introduce a perspective from a resident of country New South Wales to this significant piece of legislation.

The PRESIDENT: Order! Honourable members wishing to engage in private conversations should do so outside the Chamber.

The Hon. DOUG MOPPETT: When the bill was introduced, members of the public could have been concerned initially that it was a reaction to considerable publicity generated by a number of cases in the United Kingdom in which young children identified as being at great risk and in need of intervention and special care met with unfortunate circumstances. I recollect that some of those children died as a result of their state of neglect and abuse. In the United Kingdom it was held that failure to intervene in a permanent way and at an early stage was the reason for those most unfortunate outcomes. We viewed the introduction of this legislation with some anxiety. In New South Wales we have been through a fairly emotional debate about permanent placement as it related to adoption processes that existed in this State and the experience of the "stolen generation" of Aboriginal children who were placed in foster care and alternate care at a time when that was thought to be in their best interests. There was considerable anxiety when the Minister, the Hon. Faye Lo Po', announced the introduction of new legislation to provide for early and determined intervention that would result in the permanent placement of children in alternate care in certain instances.

To the credit of the Opposition and members of the public, alarm was raised about the legislation in its initial form. The Minister may well have been carried away in a rapture following publicity in other countries generally and the United Kingdom in particular. Honourable members are aware of the caution that has developed over the past decade about the availability of quality alternative care. Therefore, the prospect of this sort of early intervention and permanent placement is rightly viewed with some apprehension. The model proposed in this legislation—of course, after appropriate procedures have taken place—provides that a child who is otherwise at risk will be given a permanent placement order allowing for alternative care, foster care in particular, and perhaps adoption in some cases.

While the process set out in the legislation seems clear, implementation will be much more difficult. I emphasise the difficulties that will be experienced when families in remote and rural country settings are identified. Firstly, it is difficult to bring to bear appropriate Department of Community Services officers to intervene. Secondly, in many cases it is difficult to arrange appropriate alternative care and to find adequate and satisfactory permanent foster care for children. Looking forward to permanent placement by way of adoption, while that certainly should be available, is wishful thinking. In a previous debate honourable members noted from figures published in reports by committees of this Parliament that adoption particularly of Australian-born children is now a rare occurrence, for all sorts of reasons.

Basically, preference is expressed by parents who seek to adopt children and who are concerned about the nature of open adoption, as we tend to call it today. The number of people who wish to enter into that sort of undertaking for the care of children who are not their own natural children is declining and it is now a rare occurrence, so basically we are looking at permanent foster care. Such is the nature of our changing society that fewer and fewer people are prepared to undertake the immense task of picking up the lives of children who have suffered the disruption of intervention into their natural families and who in many cases carry scars from those experiences and on occasions will present challenging behaviour to those who seek to care for them.

One aspect of this legislation that calls for attention and to a degree reveals the almost glib nature in which the Government has pursued this whole sensitive area is the manner in which the Government has accepted kinship placement as the final solution. Honourable members would know that in some catastrophic situations the intervention of uncles and aunts, and in some cases sisters, as substitute mothers, and certainly grandmothers and grandfathers, is a welcome and proper circumstance in which to maintain the care of children as a temporary arrangement. In some cases the contribution of relatives continues in a secondary role. But to

take the view that the Government's responsibilities come to an end once a grandmother, aunt or uncle has taken on the care of a child whom the Department of Community Services has identified as the subject of intervention would be a gigantic leap of faith.

I do not think it is appropriate at this stage for the Parliament to pass an Act that allows for kinship placement to be given such an elevated status. I believe that kinship placement should be regarded as a discrete and special arrangement that is likely to produce good results but is not certain to do so, with an acknowledgement that the arrangement requires continuous surveillance and monitoring. I hope that amendments can be made at the Committee stage to bring about modification of this legislation to accommodate the need for surveillance and continuing interest by the Department of Community Services, which should not abrogate its responsibilities based on the assumption that kinship placements will be lasting placements.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

PUBLIC LIABILITY INSURANCE

The Hon. JENNIFER GARDINER: My question without notice is to the Special Minister of State. Is he aware that the annual Christmas in Mudgee festival has been cancelled this year due to rises in the cost of public liability insurance, which has resulted in the organising committee facing a quote of $5,000 for insurance for a one-night event?

The Hon. Michael Egan: How much?

The Hon. JENNIFER GARDINER: It is $5,000 for insurance for a one-night event for a Christmas festival. Considering that this festival and scores of others in country towns across New South Wales operate as not-for-profit community events, what will the Government do to ensure that public liability insurance costs do not cause more events to be called off and do not threaten events such as the forthcoming Country Music Festival in Tamworth?

The Hon. JOHN DELLA BOSCA: It is an excellent question and the Hon. Jennifer Gardiner is showing that she is very much on the ball in asking it. Public liability insurance costs are of increasing concern for a range of institutions, particularly not-for-profit organisations, clubs and other bodies, and by extension, another tier of government, local government. Eventually it will affect the operations of State and Commonwealth governments. I make the general observation, and most honourable members would accept it as a fairly obvious starting point for analysing some of the problems, that the events of 11 September have had an impact on the reinsurance area, particularly gross and net underwriting costs for insurers, which have gone up.

The Hon. Michael Egan: Don't forget the decisions made by courts.

The Hon. JOHN DELLA BOSCA: I am coming to that. Post the events of 11 September, a new world of risk has been created. Actuaries are factoring in all sorts of underwriting activities, factors that previously would not have been considered. There has been an overall actuarial review across the board of all sorts of potential risks and vulnerabilities. That leads me to the reminder by the Leader of the Government, although I did not really need reminding, about the statutory classes of insurance and other classes of insurance.

The Hon. Duncan Gay: He worries about you. You still have your training wheels on as well.

The Hon. JOHN DELLA BOSCA: No, those have gone off long ago. Difficulties have been created by an increasingly litigious culture and by the interaction of that litigious culture and some, but not all, unscrupulous parts of the legal profession. We are finding the evolution of a plaintive legal culture, which did not exist widely in Australia; at least, if it did exist, it was confined to a relatively small number of insurance areas and a small number of public exposures. The operation of the common law, which is a matter that has been debated in this House in another manifestation, has created a series of vexed policy problems for governments of all political persuasions. The honourable member's question also asked me what the Government proposes to do about the problem.

The Government has been monitoring the impact of public liability insurance increases. Indeed today I was discussing the matter with a former member of this House, the honourable George Brenner, who is active in

the Jugiong golf club, which is having great difficulties. It is apparently a small volunteer country organisation that has suddenly been hit with a massive increase in the cost of public liability insurance. That is just one golf club, and I am sure that there would be 10, 20 or 100 across rural New South Wales, which have been placed in a similar situation. The Government is acutely aware of the problems that public liability insurance increases could create for our recreational and cultural facilities.

The Hon. Duncan Gay: What are you going to do about it?

The Hon. JOHN DELLA BOSCA: During the next few months I will have to look at the impacts, and discuss some of them with the insurance companies and the insurance industry. I will have to examine the community organisations that have been affected and start to develop a new way or some new policy options for dealing with exposure to public liability.

The Hon. JENNIFER GARDINER: I ask a supplementary question. The Minister mentioned that over the next few months he will be good enough to look at the issue. The Country Music Festival is held on the long weekend in January. Will he undertake to have an answer before that festival occurs?

The Hon. JOHN DELLA BOSCA: I do not know whether I can provide the comprehensive answer to difficulties of public liability insurance—

The Hon. Michael Egan: Tell them about the $4 million I gave for the festival.

The Hon. JOHN DELLA BOSCA: As the Treasurer points out, he is already providing important financial support for that cultural activity.

The Hon. Duncan Gay: You are not going to be allowed to answer your own question.

The Hon. JOHN DELLA BOSCA: The Treasurer can say whatever he likes. I think it is right for him to point out that the State Government has been very supportive of Tamworth's Country Music Festival.

The Hon. Michael Egan: It is a great event.

The Hon. JOHN DELLA BOSCA: Yes, and it is an important part of popular culture and, indeed, in some respects high culture in New South Wales. In response to the supplementary question asked by the Hon. Jennifer Gardiner, I will undertake to get in contact—

[*Interruption*]

The Hon. John Ryan: Is the Treasurer endorsing a candidate?

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

The Hon. Michael Egan: I thought I was saying something nice about the National Party candidate, but I find that he is not a National Party candidate.

The Hon. Duncan Gay: Point of order. I take my point of order for the Leader of the Government to clarify his endorsement of Mr Treloar as the Labor Party candidate.

The Hon. Michael Egan: I was saying something nice about Mr Treloar's championing of Tamworth's Country Music Festival. I thought he was the National Party candidate.

The PRESIDENT: Order! Because the point of order taken by the Deputy Leader of the Opposition relates to a matter referred to in an interjection, and because interjections are disorderly at all times, there is no point of order. The Minister may continue to answer the question, except that time has expired.

The Hon. Michael Egan: Madam President, may I make a—

The PRESIDENT: Is the Minister taking a point of order?

The Hon. Michael Egan: No. I am giving the House a correction.

The PRESIDENT: Order! The Minister may make a personal explanation at the appropriate time by leave of the House.

The Hon. Michael Gallacher: But at the end of question time.

The Hon. Michael Egan: I just want to apologise to Mr Treloar. I genuinely believed that he was a National Party candidate, and I am informed that he is not.

The Hon. Michael Gallacher: Point of order—

The PRESIDENT: Order! A personal explanation can be made only when there is no business before the House.

SPORTS INJURY PREVENTION

The Hon. JANELLE SAFFIN: My question without notice is directed to the Special Minister of State, and Minister for Industrial Relations. Will the Minister inform the House about efforts undertaken by the New South Wales Sporting Injuries Committee to promote knowledge about the prevention of sports injuries?

The Hon. JOHN DELLA BOSCA: Some honourable members may not be aware of the important work of the New South Wales Sporting Injuries Committee. The committee is the part of WorkCover that administers the sporting injuries insurance scheme, and encourages research and education to promote safety in sport. In conjunction with the New South Wales Department of Sport and Recreation, last week the committee hosted the second National Sports Injury Prevention Conference, from 22 to 24 November. The theme of the conference was "Breaking Down the Barriers" and the topics discussed included community injury prevention, the law and safety in sport, food and diet in sport, protective equipment, preventing injuries for people with disabilities, protecting children in sport, and safer sport for older adults.

The conference featured high-profile local speakers and experts from the Institute of Preventive Sports Medicine in Michigan and the Safety Unit of the Quebec Department of Leisure and Sport. I was pleased to present the awards recognising the work of those involved in sports injury prevention. Awards were presented for applied research, educational and promotional programs, and safe sports practice. The award winners were a diverse group. They ranged from the Ettalong Public School, which is just down the road from me, to the BioMechanics Research Laboratory at the University of Wollongong.

The Hon. Michael Egan: That is a very good university.

The Hon. JOHN DELLA BOSCA: It is a very good university.

The Hon. Michael Gallacher: In the marginal seat of Peats.

The Hon. JOHN DELLA BOSCA: In the safe seat of Peats. Ettalong Public School's "Be Careful, Be Sensible, Behave" program is applied to all sporting and physical education activities conducted by the school. Students are instructed on the safe and appropriate use of all sporting equipment and are reminded of the slogan and the importance of its message. Since the introduction of the program this year, there has been a significant decrease in the number of children for first-aid as a result of sporting and physical education activities. The University of New South Wales has a sporting injuries surveillance program that examines results from four levels of rugby. It compares the results for injuries sustained at the elite level but also for clubs, schools and junior players. Members may be interested in research that compares the rehabilitation of those injured on the sporting field and those injured at work. I am sure all members will acknowledge the importance of the conference and the awards presentation in promoting knowledge about the prevention of sports injuries.

POLICE OFFICERS WORKERS COMPENSATION ENTITLEMENTS

The Hon. MICHAEL GALLACHER: My question without notice is to the yet again late-arriving Minister for Police. Is the Minister aware of the New South Wales Police Association's view that the Government's workers compensation laws will have a devastating impact on possibly hundreds of police officers? Is the Minister aware that the Secretary of the New South Wales Police Association, Mr Remfrey, believes that officers who are at risk of psychological and psychiatric injuries as a result of their front-line work will be worse off under the Government's proposed legislation? What action has the Minister taken, and what will he do to protect the entitlements of these officers now that these matters have been raised with him?

The Hon. Michael Egan: Point of order: The matter that is the subject of the Leader of the Opposition's question is presently before the House, and therefore the question is out of order. In any event, even if the matter were not before the House, the question should have been directed to the Minister who is responsible for the bill: the Minister for Industrial Relations.

The Hon. John Jobling: To the point of order: The question was whether the Minister for Police is aware of the New South Wales Police Association's view. On my understanding, the Minister for Police deals with the Police Association and is supposed to be on friendly terms with it. It would therefore seem reasonable and logical that the question be asked of the Minister for Police.

The Hon. Michael Egan: Further to the point of order: If the question were, "Are you aware of the Police Association's view?" it would be a nonsense. The question was whether the Minister is aware of the Police Association's view on legislation that is before the House. Clearly, the question is out of order.

The Hon. Michael Gallacher: To the point of order: There was no mention of the current legislation. The question referred to workers compensation reforms of the past, in general. Clearly, the Minister is in a position to answer that question, in light of what has already occurred in New South Wales with respect to psychological injuries that have been determined by the House in the past.

The Hon. John Ryan: To the point of order: Last weekend I read in the newspaper that the Minister for Police issued a press release saying that he had recently met with senior officers of the New South Wales Police Association and discussed a wide variety of matters with them. The question is entirely in order, in that it relates to statements made by the Minister to the effect that he has met with the association, requested its views, and has apparently given the association his views. It is entirely appropriate to ask the Minister for Police about his views on these matters, in view of his recent meetings with the New South Wales Police Association.

The Hon. John Della Bosca: To the point of order: I wish to respond to the points made by the Hon. John Ryan. As I am sure members are aware, what is in issue here is the form of the member's question, which was clearly about the legislation that is presently before the House. Regardless of the Minister's previous statements in relation to other matters he may have discussed with the Police Association, the thrust of the question clearly seeks for the Minister for Police to answer questions about legislation that is presently before the House.

The Hon. Ian Macdonald: To the point of order: There have been numerous rulings in this House concerning anticipation of debate. Clearly, the question asks about psychological injuries in relation to the police force of New South Wales, and it therefore anticipates a specific debate that has already been placed on record this morning. That debate is presently before the House, and consequently the question cannot be allowed.

The Hon. Michael Gallacher: To the point of order: Madam President, may I assist. What I am asking about is the medical guidelines that have been passed by this House and are now law in New South Wales. The Minister for Industrial Relations well knows that psychologists and psychiatrists are concerned about the impairment guidelines that have already been voted upon in this House. Members opposite are simply gutless in not answering the question.

The PRESIDENT: Order! The reference in the question to a statement by the Police Association clearly relates to workers compensation legislation, in relation to which a bill will be debated in this Chamber today. Consequently, the question is out of order. If it were asked in the form suggested in the points of order, it would be in order.

POLICE ACCOMMODATION COSTS

The Hon. DUNCAN GAY: My question is to the Minister for Police. Now that the Minister has reversed the decision to close police stations in the inner metropolitan area and replace them with super stations, will he inform the House how much taxpayers' money was spent leasing space for 300 officers in the Walker Building on Botany Road, Mascot, the site for one of the proposed super stations? How much money was spent fitting out the space, including the cost of furniture, security equipment and other facilities? How many officers will now be based at the Walker Building? How much taxpayers' money was wasted by this exercise, at a time when police officers are desperately short of funds for operational policing?

The Hon. MICHAEL COSTA: I do not have the answer to the question, but I will obtain it for the honourable member.

MULTIPLE CHEMICAL SENSITIVITY

The Hon. ALAN CORBETT: My question is addressed to the Minister for Juvenile Justice, representing the Minister for Community Services. Will the Minister advise whether her department has been contacted by any person with the condition referred to as multiple chemical sensitivity for the purpose of being classified as disabled under the New South Wales Disability Services Act 1993, part 5 (1), definition for target groups? If so, what was the outcome? In general, what have been the outcomes for these people?

The Hon. CARMEL TEBBUTT: I will refer this detailed question to the Minister for Community Services and undertake to get a response as soon as possible.

REGIONAL BUSINESSES

The Hon. IAN WEST: My question without notice is to the Treasurer. How have New South Wales regional businesses benefited from their involvement in the Sydney 2000 Olympic Games?

The Hon. MICHAEL EGAN: I am pleased to advise that New South Wales regional businesses have secured contracts valued at more than $300 million as a result of and following their involvement in the Sydney 2000 Olympic Games. A fine example of a regional company that has successfully built on its Olympic experience is the engineering company Xypex Australia, based in Albury-Wodonga, as many honourable members would know. Formed 10 years ago, Xypex employs 28 workers at its Lavington factory site near Albury. Xypex provided its concrete waterproofing services to many of the Games venues, including the International Aquatic Centre, the Homebush Bay Ferry Terminal, Stadium Australia and the Olympic Park Railway Station.

The unique concrete waterproofing process used by Xypex in its Olympic work reduced construction cost while saving time, and has allowed the company to win major contracts by showcasing its product with the Australian Technology Showcase. It recently secured a contract valued at $4 million from the Kowloon Canton Railway Corporation of Hong Kong for concrete work on the west rail project. The company has also signed a second contract valued at $5 million and is negotiating several other major contracts. In a separate contract, Xypex is in the process of supplying waterproofing and treatment products for the Tauen Wan West underground station and approach tunnels in Hong Kong. The company has also successfully completed construction and remedial work at the Singapore Arts Centre. It is clear that New South Wales regional businesses are among the world leaders in their field.

Another company to capitalise on international interest following the Olympics is the Gosford firm Starena International. Starena International has developed innovative, stylish, robust stadium or arena seating which was installed in three Games venues—the tennis, aquatic and equestrian centres. The company has already gained an 8,000-seat contract in Prague and is pursuing export opportunities in the United Arab Emirates, the United States and Israel. It is encouraging to see that regional businesses are sharing in the success of the Government's post-Olympic business strategy, and I wish companies like Xypex and Starena International all the best in the future.

PARLIAMENT HOUSE STAFF SAFETY

The Hon. MALCOLM JONES: My question without notice is to the Minister for Police. Following unsatisfactory answers in the past to correspondence with the Minister's office, and his predecessor's reluctance to tackle my question, I ask that in the event of trade unionists blockading or preventing access to Parliament House with a picket line or any other method of barricade, will the Minister for Police guarantee members of Parliament and staffers safety when entering this House?

The Hon. MICHAEL COSTA: As Minister for Police I will make sure that the laws of this State are upheld.

GLEBE HIGH SCHOOL POLICE PRESENCE

The Hon. PATRICIA FORSYTHE: My question without notice is to the Minister for Police.

The Hon. John Della Bosca: Why don't you ask education questions any more?

The Hon. PATRICIA FORSYTHE: Because you don't have education any more.

The Hon. John Della Bosca: But the Hon. Michael Costa has.

The Hon. PATRICIA FORSYTHE: You don't know what I am going to ask. My question is to the Minister for Police. I refer to the Minister's supplementary answer to my question yesterday relating to police attendance at a demonstration at Glebe High School on Monday evening. Parents have advised me that at one point in the evening there were four police vehicles at the scene and four police arrived in each of three of the vehicles. Can the Minister explain why his officers were not able to provide a more accurate account of the numbers of police in attendance, or was the Minister snowed at his first question time?

The Hon. MICHAEL COSTA: I know that the honourable member is embarrassed that she provided the House with false information yesterday, which I corrected in my supplementary answer relating to the number of police that attended. The honourable member claimed that 16 police attended when, in fact, there were only six—now she is claiming that four police vehicles attended. I will find out the answer to her question and correct it.

JA-BIAH BAIL ACCOMMODATION PROGRAM

The Hon. RON DYER: I ask the Minister for Juvenile Justice a question. What action has the Government taken recently to provide safe accommodation for young Aboriginal offenders on bail?

The Hon. CARMEL TEBBUTT: Honourable members will recall my recent announcement on the introduction of a strategic plan by the Department of Juvenile Justice to address the issue of Aboriginal over-representation in the juvenile justice system. As I have said on a number of occasions, that is an issue of significant concern and challenge for the Government. A key plank of that strategy was an extended funding agreement with the important Ja-Biah bail accommodation program in Western Sydney. I have visited Ja-Biah and I know that it does very good work. Following an extensive tendering process, the Department of Juvenile Justice will provide nearly $1 million for Ja-Biah, located in Western Sydney, to cater for Aboriginal young people released on bail. The funding—$990,000 over three years—will enable Ja-Biah to engage in some long-term planning for staff and clients who are predominantly Koori young people from the Sydney metropolitan region.

It is well known that one of the reasons for Aboriginal over-representation in the juvenile justice system is often the reluctance of courts to grant bail to some young Aboriginal people appearing before them. That is because the courts believe there is no safe place to which the young person can return. The Bail Accommodation Support program provides an accommodation option for Aboriginal and Torres Strait Islander young people who would otherwise be refused bail due to a lack of appropriate accommodation. The Ja-Biah service has been praised widely for its achievements in helping turn young offenders away from a life of crime. It does not just provide accommodation but it engages the young people who use its service with a range of programs and assists them to gain employment and get their life back on track. The new funding agreement aims to build on its established success. It will provide a safe, supportive, and positive environment to help young residents work towards regaining their place in their communities, and to maintain and foster their family and community links.

The young people are closely supervised 24 hours a day, seven days a week by experienced staff, a significant number of whom are from Aboriginal backgrounds. The service houses up to six residents aged from 10 to 18 years—although they are usually aged 15 to 17 years—and they will be referred to Ja-Biah principally by the courts after an appropriate recommendation by the Department of Juvenile Justice. While at Ja-Biah the young people will participate in a range of programs, such as counselling, health, education, training, employment and living skills. I take this opportunity to congratulate the directors, managers and staff of Ja-Biah on their success in winning the tender. I wish them every success in delivering this valuable program. As I have said on many occasions, working with young juvenile offenders is not an easy job but a necessary one. The staff at Ja-Biah do a very good job.

POLICE SNIFFER DOGS

The Hon. RICHARD JONES: I ask a question of the Minister for Police. Last week the Minister instructed the police to use discretion with sniffer dogs. Precisely what did he mean? Does the Minister accept that there have been outrageous abuses of civil liberties, with innocent people being strip searched in the street? Does the Minister acknowledge that about one-third of the people of New South Wales use cannabis—including people quite close to him, as he knows? Does the Minister think it is appropriate to profile and target teenage

males on public transport, knowing that one in two of those use cannabis? Why not target the big-time heroin dealers who drive BMWs and Mercedes? Will the Minister now instruct the police to concentrate on the hard drug dealers instead of wasting time and resources harassing harmless cannabis users? Will the dogs that sniff only cannabis be retrained to sniff out dangerous hard drugs that cause so much misery and crime?

The Hon. MICHAEL COSTA: Last week I did not instruct the police to do anything at all. I suggested that sniffer dogs would always be used by competent officers with discretion. In my discussions with police I am reassured of that fact. In relation to civil liberties, I do not believe that the sniffer dog legislation that is being proposed has any impact on civil liberties. As I have repeatedly said in the media, the Government has put in place a set of arrangements particularly to do with cannabis cautioning. The cannabis cautioning system is working to protect people's civil liberties. In relation to profiling, my understanding is that it is appropriate and proper police practice to profile to collect intelligence, to ensure that when police target operations they do so with the maximum focus.

With regard to heroin dealers, this Government has put in place a range of laws that have gone right to the heart of drug dealing in this State, the drug house laws being the most recent example. Those are very effective laws: 161 people have been arrested under those laws. That clearly attacks the people that the honourable member was focusing on. Legislation relating to sniffer dogs will be brought into the Parliament. From my discussions with police, they welcome that legislation, they support the Government and they support the laws of this State.

MINISTER FOR POLICE VOLUNTARY DRUG TEST

The Hon. CHARLIE LYNN: My question is to the Minister for Police. In March 1999 the Minister told *workersonline*—the official website of the New South Wales Labor Council—"Drug abuse is an issue which union officials and delegates are often confronted with. We recognise it is an occupational health and safety issue in the workplace. It's time our politicians caught up with this view." Assuming that the Minister still holds those views—and there is no evidence to the contrary—will he now take a leadership role and set an example to police officers by volunteering to take a drug test, in the same way that police are expected to submit to random tests?

The Hon. Michael Egan: Point of order: I suspect that the Hon. Michael Costa wants to answer this question and I am sure that, in one way or another, he will get that opportunity.

The Hon. Richard Jones: Why don't you let him answer the question?

The Hon. Michael Egan: Because the question is out of order. The Hon. Michael Costa is not answerable to this Parliament for any comment that he expressed in his capacity as Secretary of the New South Wales Labor Council. The Hon. Michael Costa is now a member of Her Majesty's Government. Honourable members opposite should bear in mind that the Hon. Michael Costa is now a member of Her Majesty's Government, which on all matters speaks with one voice. The Hon. Michael Costa is responsible to this House for decisions and actions that he takes as the Minister for Police in Her Majesty's New South Wales Government.

The PRESIDENT: Does the Hon. Charlie Lynn wish to speak to the point of order?

The Hon. Michael Gallacher: There is no point of order.

The Hon. Michael Egan: There is a point of order. Clearly, it relates to a Minister's responsibility for public affairs—not what I said when I was the ALP candidate for Cronulla in 1971, or what the Leader of the Opposition said when he was a policeman on the beat in 1923 or whenever.

The Hon. Charlie Lynn: On the point of order: My question seeks, firstly, to find out whether or not the Minister still holds the views to which I referred. If he does not, surely he can tell this House that as Minister he no longer holds those views. If he does hold those views I suggest he take a leadership role—and leadership is not only about telling people what you say they should do but also doing what you say they should do. It is a question of the Minister's leadership.

The Hon. Michael Egan: Further to the point of order: We are now told by the Hon. Charlie Lynn that he is asking for the Minister's views. In other words, he is seeking the Minister's opinion. The Hon. Charlie

Lynn was one of those who voted for the sessional orders that prevent members and Ministers from expressing opinions. I wish we could express opinions. I would love to tell the House my opinion on all sort of things, but I am prevented from doing so by the sessional orders that have been imposed upon me.

The Hon. Duncan Gay: On the point of order: The Minister for Police is now a public official—indeed, as the Leader of the Government indicated, a very high public official. I, and I am sure other members of this House, believe it is important to understand the beliefs of a Minister and to know whether this Minister still holds to those views. I believe the Minister wants to answer the question but it is obvious that the Leader of the Government now has no confidence in his Minister. On no less than two occasions today the Leader of the House has stopped his Minister. That indicates to the Opposition that Ministers had a debriefing yesterday and now have no confidence in the ability of their new Minister.

The Hon. Michael Egan: Further to the point of order: As the Deputy Leader of the Opposition quite rightly points out, the Minister for Police does want to answer the question. That is not the test. The test is whether questions being asked by the Opposition are or are not within the sessional orders. This question is outside the sessional orders and all precedents set by this Chamber.

The Hon. John Ryan: On the point of order: The question asked by the Hon. Charlie Lynn was:

> ... will the Minister now take a leadership role and set an example to police officers by volunteering to take a drug test—in the same way that police are expected to submit to random tests?

That was the question, stripped of extraneous words that my colleague used. I submit that that aspect of the question is in order because it refers to the taking of tests by police officers and asked whether the Minister is prepared to use the same guidelines that govern the people he administers.

The PRESIDENT: Order! I remind honourable members of the two relevant sessional orders which have been debated. The first is that questions may be put to Ministers relating to public affairs with which the Minister is officially connected, to proceedings pending in the House or to any matter of administration for which the Minister is responsible. A question about whether the Minister will take a drug test has nothing to do with the public affairs to which the Minister is officially connected. I also remind honourable members that questions may not ask for an expression of opinion. The question needs to be rephrased before it will be in order.

NEW SOUTH WALES-ITALY TRADE AND INVESTMENT ENVOY

The Hon. JAN BURNSWOODS: My question without notice is directed to the Treasurer, and Minister for State Development. Will the Minister inform the House of any issues designed to strengthen bilateral relations and trade between New South Wales and Italy?

The Hon. John Della Bosca: Why am I not involved in special investment and trade?

The Hon. MICHAEL EGAN: Because you are occupied with other important matters—and, by the way, you are doing very well with them too. A great triumph is about to happen. I am pleased to advise the House that New South Wales will, for the first time, have a trade and investment envoy to Italy. The New South Wales trade and investment envoy, who was announced by the Premier on Monday, will strengthen bilateral trade and create jobs and investment in this State. Italy is an economic powerhouse, of course, with the world's sixth largest economy and a gross domestic product that accounts for 15 per cent of the total output of the European Union. Bilateral trade between Australia and Italy is already worth $5.4 billion. Italy is New South Wales' tenth-largest market for merchandise exports and the economic relationship between the two nations is continuing to strengthen. Italian companies such as Mondo, builders of the Olympic athletics track, were key players in making the Sydney Olympic Games the great success that it was.

The Premier has already announced that Mr Nicholas Papallo, OAM, has accepted the post as the State's first honorary New South Wales-Italy trade and investment envoy. Mr Papallo has been an active member of the Australian-Italian community for several decades and is well qualified for the job. After migrating from Calabria at the age of 11 in 1949, he obtained a law degree from Sydney University in 1965 and has been in private practice ever since. He was the Honorary Vice-Consul of Italy for six years and President of the Italian Chamber of Commerce for seven years. He is already working in close collaboration with the Department of State and Regional Development on a number of projects.

I welcome and congratulate him as the honorary New South Wales-Italy trade and investment envoy. I look forward to working with him in enhancing our already good bilateral relations with Italy and delivering

tangible benefits by fostering greater investment and creating more local jobs for the people of the State. The Hon. Dr Brian Pezzutti and I, together with the honourable member for Fairfield and the Minister for Public Works and Services had an enjoyable and valuable lunch last week with the Italian Ambassador to Australia.

The Hon. Dr Brian Pezzutti: And the Consul General.

The Hon. MICHAEL EGAN: And the Consul General in Sydney. They are both great ambassadors for their country. I am sure that together we will be able to do a lot of extra business between New South Wales and Italy.

BEAT POLICING

Reverend the Hon. FRED NILE: I wish to ask the Minister for Police a question without notice. It is a fact that a few years ago the Government and the New South Wales Police Service adopted a policy of community policing, with its main emphasis on beat policing? How many New South Wales police officers are involved on a daily basis in beat policing duties on the streets of New South Wales towns and suburbs? Will the new Minister for Police give a high priority to beat policing and ensure that all police commands also strongly support this important policy to ensure the safety of New South Wales citizens?

The Hon. MICHAEL COSTA: This is a very good question and ties in exactly with the policies I have been promoting for front-line policing. The community expects and certainly the Government desires that we have a more front-line, visible police presence, and that involves relationships with the community and structures to ensure that the community has input into policing strategies. We want to find local solutions to local problems. That requires us to have very close relationships.

I am happy to provide the honourable member with information on the amount of police involved if he wants the statistics for any particular locations. My focus has been to talk to front-line police and to ensure that we provide them with the resources and the structures to enable them to perform their front-line policing functions. The police I have spoken to are very supportive of that policy. They are enthusiastic. If we can put in the resources, we can ensure that the community gets the front-line, visible policing it expects. Front-line policing requires a community approach, and I endorse that approach.

POLICE ROSTER INFORMATION

The Hon. JOHN RYAN: My question without notice is to the Minister for Police. Is the Minister aware that the New South Wales Police Service now refuses to provide to members of Parliament, under freedom of information, police rosters for local area commands, even though previously these rosters were regularly made available? Given the Minister's statement on radio that there is a need for greater transparency and a need for the community to have a greater role in local policing matters, surely it is crucial that members of the public have details about when and how police are on duty in their local communities. Will the Minister now request the freedom of information unit to commence releasing details of police rosters, as they have done previously?

The Hon. MICHAEL COSTA: I will certainly have a discussion with the Police Service to ascertain the reason for the non-provision of those statistics. Some operational matters may be involved. If there are not, I will certainly come back to the House with an answer to that question.

The Hon. JOHN RYAN: I ask a supplementary question. Will the Minister provide some details about the time frame in which he might have this discussion with the Police Service so that we might be able to ask the Minister a suitable question in the future about the results of the discussion?

The Hon. MICHAEL COSTA: As members of the Opposition are sticklers for the standing orders, I advise them that the standing orders provide me with a time frame to respond to the question. However, having said that, I advise the Opposition further that I will speak to the police commissioner as soon as possible.

BIOTECHNOLOGY INDUSTRY

The Hon. HENRY TSANG: My question without notice is to the Treasurer, and Minister for State Development. Will the Minister inform the House of the Government's progress in encouraging growth of the biotechnology industry in this State?

The Hon. MICHAEL EGAN: As most honourable members will be aware, the Government continues to support and promote a strong biotechnology sector in the State. With the release of the New South Wales Government's Bio*First* strategy in August, our position has gone from strength to strength. Only last week I spoke at a Deutsche Bank conference on investment in medical and pharmaceutical biotechnology. I am pleased to report that six of the 10 companies profiled at that conference were based in New South Wales. In fact, 40 per cent of total biotechnology and pharmaceutical companies in Australia have New South Wales as their base. I am also pleased to report that four of the companies with representatives speaking at the conference are members of the Australian Technology Showcase. These include ResMed, which has made the Forbes 200 Best Small Companies in America list for the fifth year running.

Last week I announced the recipient of the first Proof of Concept grant, provided under Bio*Business*, one of the cornerstones of our biotechnology strategy. The grant of $100,000 was given to a local biotechnology software company, BioLateral Pty Ltd. I am sure the Hon. Dr Brian Pezzutti is aware that BioLateral is a leader in bioinformatics, the process and analysis of biotechnology research data, which is one of the fastest-growing areas in biotechnology. The company is using this grant to look at commercialising the dedicated information technology workstation and software it has developed for use by biotechnology researchers.

Our success in attracting the top firms in biotechnology was confirmed by Biogen's recent decision to set up its Asia-Pacific headquarters in Sydney. Biogen was founded in the United States in 1978 and is a worldwide leader in the treatment of multiple sclerosis. I am told that it chose Sydney because of the concentration of the pharmaceutical market here and the availability of highly skilled workers. Biogen's North Sydney regional headquarters currently employs 16 staff and this is expected to increase to between 30 and 50, pending regulatory approval for some of its other products. The Government's commitment to the biotechnology industry is well known and I look forward to working with more leading companies in the future.

MINISTER FOR POLICE COMMUNITY CONSULTATION

Ms LEE RHIANNON: I direct my question to the Minister for Police. Will the Minister undertake to meet with the New South Wales Council for Civil Liberties and the New South Wales Council for Social Service to discuss their concerns about amendments relating to sniffer dogs and other aspects of the Government's panicked law and order agenda before the legislation is introduced into the House and before his next meeting with Mr Alan Jones?

The Hon. MICHAEL COSTA: I had intended to take that question seriously until the honourable member added the final comment. However, given that she has indicated that the groups she mentioned have some concerns, I am happy to meet with both of those groups.

POLICE OFFICERS WORKERS COMPENSATION ENTITLEMENTS

The Hon. MICHAEL GALLACHER: My question without notice is addressed to the Minister for Police. Is the Minister aware of the New South Wales Police Association's view that the Government's workers compensation impairment guidelines, initiated following the passage of the workers compensation reforms earlier this year, will have a devastating impact on possibly hundreds of police officers? Is the Minister aware also that the secretary of the association, Peter Remfrey, believes that officers who are at risk of psychological and psychiatric injuries as a result of their front-line work will be worse off under these guidelines? What action has the Minister taken, and what will he do to protect these entitlements, about which concern has been expressed by members of the Police Service?

The Hon. MICHAEL COSTA: I would have enjoyed answering that question earlier if it had been framed in the proper manner. I am pleased that it is now framed in the proper manner. I did meet with the Police Association yesterday. One issue raised was changes to workers compensation. I immediately organised a meeting with the Minister for Industrial Relations; that meeting will be held in the near future.

DRUG INFORMATION WEB SITE

The Hon. AMANDA FAZIO: My question without notice is directed to the Special Minister of State. Will the Minister inform the House whether he has any key statistics regarding the Government's Drug Summit web site *druginfo*?

The Hon. JOHN DELLA BOSCA: A key issue that emerged from the New South Wales Drug Summit was the need to increase community information and education on drug issues. One strategy adopted to

meet this challenge was the creation of *druginfo*—the New South Wales Government's drug information web site. The *druginfo* web site has a whole-of-government emphasis reflecting the co-ordinated approach adopted by the New South Wales Government in the fight against drug abuse. It provides information on treatment services, fact sheets on illegal drugs, information for parents, information on legal and enforcement issues, non-English speaking background publications, national and international approaches, and much more. Statistics reveal a steady increase in the number of hits being made to the site. In October 2001 there were 208,316 hits.

The Hon. Michael Gallacher: A very poor choice of words.

The Hon. JOHN DELLA BOSCA: As the Leader of the Opposition knows, nonetheless it is the standard way of describing activity in this digital virtual world.

The PRESIDENT: Order! I call the Leader of the Opposition to order. The Minister may continue.

The Hon. JOHN DELLA BOSCA: Since November 2000 when the site was first launched there have been nearly two million hits. This indicates the success of the *druginfo* web site as an information source. Statistics also indicate that information relating to illicit drugs are the most commonly accessed type of information. Efforts are being made to enhance this area of the site. The most commonly downloaded information during October was the Drug Summit progress report, which details initiatives made by the New South Wales Government since the Drug Summit. The web site is able to deliver greater accessibility for New South Wales Government drug-related reports and is in line with efforts on behalf of the New South Wales Government to become a leader in information technology services. As part of the marketing strategy for the *druginfo* web site, a flyer was produced to be circulated to area health services, schools and community centres.

The Hon. Duncan Gay: Your people said I had sex links on my website and it went from 50 hits a day to over 5,000.

The Hon. JOHN DELLA BOSCA: I acknowledge the interjection of the Deputy Leader of the Opposition. The flyer contains information about the web site, including the "Act Now" logo and the address of the site. It has been successful in raising the profile of the site—obviously the *druginfo* site is doing better than the Deputy Leader of the Opposition in terms of raising the profile of its site—and consequently increasing the number of visitors to *druginfo*. Our statistics indicate that visitors to the site come from as far afield as Israel, the Netherlands, Switzerland, Mexico, Finland, France and Italy. Montgomery Blair High School in Maryland, United States of America, is amongst the most highest reported users of the site.

The *druginfo* web site is an obvious channel for the New South Wales Government to inform the community of action on drug-related issues. All the information on the web site is subject to a thorough evaluation and quality assurance process to ensure its reliability and appropriateness. The web site has received recognition from a number of national and international sources, including the National Drug and Alcohol Research Council, the Australian Drug Foundation, the American Whitehouse Drug Policy Information Clearinghouse and the United Kingdom Drug Policy Advisory Service. The web site was developed to provide easy access to information about drugs, programs and measures that the New South Wales Government and the community generally are taking to address drug problems. Figures reporting the usage of the site indicate that *druginfo* is an effective information source throughout New South Wales and the world.

PAID MATERNITY LEAVE

The Hon. HELEN SHAM-HO: My question without notice is directed to the Minister for Industrial Relations. Is the Minister aware that only 23 per cent of women employed in the private sector have access to paid maternity leave after giving birth? Will the Minister advise what action he will take to ensure that paid maternity leave is available to all women in New South Wales, regardless of the particular industry in which they work?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for her interest in the important issue of maternity leave. As the honourable member knows, the Government, in terms of responsibility for its own employees, has facilitated maternity leave in the State Government employment sector. Recently the New South Wales Industrial Relations Commission made a new award for local government employees as well. One key feature of this award was the inclusion of paid maternity leave. Apart from illustrating the inherent advantages of the New South Wales industrial system in encouraging employers and unions to reach amicable agreements, the new award is an acknowledgment of the realities of the modern work force. That is a work force in which employers increasingly are seeking to attract, retain and manage employees who themselves are trying to balance their work and family responsibilities.

The New South Wales Government believes in encouraging and enabling employers to create opportunities for workers with young children to work flexibly and for the benefit of employers, employees and their families. Recently I launched the Government's work and families strategy, which supports attempts by employer and employee organisations to identify the concerns of their members and to develop solutions that suit the needs of business and employees. On 2 November I released a guidebook called *Time to Care: Good Family Friendly Ideas for Small Business*, which was developed by the Department of Industrial Relations in partnership with the State Chamber of Commerce and the New South Wales Labor Council. The guidebook provides practical information and advice, including case studies, to employers in small and medium-size businesses on how to implement and manage a family friendly workplace in ways that will benefit their business as well as comply with their legal requirements. At the launch I had the opportunity to talk to a wide variety of small business employers in the manual sector.

The Hon. Dr Brian Pezzutti: Why don't you talk to the Speaker and Madam President about making this place a bit more friendly?

The Hon. JOHN DELLA BOSCA: I acknowledge the Hon. Dr Brian Pezzutti's interjection. Perhaps he would be prepared to support paid maternity leave for women workers. He seems anxious to support extending the introduction of paid maternity leave more broadly throughout the private sector. As I was saying in response to the Hon. Helen Sham-Ho's substantive question, at the work and families strategy launch I was able to talk to employers in the private sector who are coming to grips with some of these issues. They universally report not only that family friendly employment practices are socially good for their employees but also that they increase productivity in the workplace. That is one important point that perhaps the Hon. Dr Brian Pezzutti and some of his colleagues often ignore. If people in the work force are treated decently, we get a more productive economy as well.

DEPARTMENT OF INDUSTRIAL RELATIONS ANNUAL REPORT

The Hon. DON HARWIN: My question is addressed to the Minister for Industrial Relations. Following on from a previous answer in which the Minister indicated some pride in web sites within his administration, I refer to the 2000-01 annual report of the Department of Industrial Relations, which was tabled in this House on 15 November. Has the Minister been advised that, despite this document being tabled, it is still not publicly available on the department's web site nearly a fortnight later? Will the Minister give an undertaking to the House to ensure that the document is available on the web site within the next 24 hours?

The Hon. JOHN DELLA BOSCA: I am a good sport. I have to acknowledge that I said the Hon. Don Harwin had it wrong about the Fair Wear campaign, he had it wrong about outworkers, he has probably got it wrong about maternity leave and he has probably got it wrong about a whole lot of things, but he may well be right about the web site. I will undertake to investigate why the report and some of the other relevant publications are not available on the department's web site and I will make sure that adequate digital access to that report is facilitated as soon as practicable.

PORK INDUSTRY EXPANSION

The Hon. TONY KELLY: My question without notice is directed to the Treasurer, Minister for State Development, and Vice-President of the Executive Council. Will he update the House on the status of the New South Wales pork industry?

The Hon. MICHAEL EGAN: I am pleased to receive a question from my colleague the convenor of Country Labor. I am pleased to inform the House that Bunge Meat Industries, which is Australia's largest pork producer and processor, is set to expand its operations in south-western New South Wales. This is a welcome development that will boost employment in towns such as Finley, Berrigan, Urana, and Temora. Where is Urana?

The Hon. Duncan Gay: West of Albury.

The Hon. MICHAEL EGAN: I see. The Australian pork industry is now undergoing a period of expansion on the back of favourable prices and strong export demand. Australian pork exports have increased from $A20 million in 1997 to more than $A150 million in 1999-2000. Bunge currently produces 20 per cent of Australia's pork and contributes more than 30 per cent of Australia's total farmed pork exports, primarily to Japan, Singapore, Korea, Hong Kong, Taiwan and New Zealand.

Bunge Meat Industries is now owned and operated by a Singaporean company, QAF Ltd, which has supermarkets and cold store operations in Singapore. The company has sound reasons for investing in Australian-based pork operations. Australian pork has significant advantages in the Singaporean market over its major exporter competitors—the Danes, the US and Canada—in that Australian pork can be flown to Singapore chilled rather than frozen. This makes Australian pork more attractive since it is considered to have better eating qualities than pork from other exporters who must freeze their pork for export. Australian pork also has the advantage of being considered to be healthy, disease-free meat—unlike the pork of some other pork-producing countries.

Bunge Meat Industries' expansion plans include doubling its current production from one million to two million pigs per year. I think that is great news for a number of districts in the south-western part of New South Wales, which stands to receive a significant economic boost as a result of this new investment.

LOCAL GOVERNMENT BOUNDARY CHANGES

The Hon. DAVID OLDFIELD: My question is to the Minister representing the Minister for Local Government. Is it correct that there is to be no public consultation with regard to the absorption of a number of other council areas by Sydney City Council? If there is to be no public consultation, given the acceptance of the amendments by Reverend the Hon. Fred Nile regarding public consultation for amalgamation of councils, is it not reasonable to expect the same consideration for such dramatic boundary changes? How will the Minister logically address criticism that enlarging the city of Sydney local government area by these means denies public participation and the right to make submissions, and hence the right to have one's views considered?

The Hon. MICHAEL EGAN: I will refer the Hon. David Oldfield's question to my colleague the Minister for Local Government. It is not my habit to speak on matters outside my portfolio but I wish to indicate my personal view as a resident of the South Sydney City Council area. I, personally, am distressed that on the boundaries that have been indicated so far, I will remain in the South Sydney City Council area. I want to be part of a decent council area and I want a decent head of my council, and Frank Sartor has been an excellent lord mayor. He is much better than that Fowler fellow, whom I had the misfortune of meeting on one occasion when he came to my office. I can tell honourable members that I felt very disappointed that he was my mayor. All of the residents of the South Sydney City Council area are entitled to be part of the Sydney City Council area anyway. I want to be in the city of Sydney.

If honourable members have further questions, I suggest they wait until tomorrow or put them on notice.

RESPITE CARE FACILITIES

The Hon. CARMEL TEBBUTT: On 24 October the Hon. Alan Corbett asked me a question without notice concerning respite care facilities. The Minister for Community Services has provided the following response:

Is it a fact that vast areas of urban and rural NSW have no suitable respite beds?

In recognition of the need for additional respite services, a total of $4.6 million recurrent and $1.1 million one-off was distributed for new flexible respite services in the 1999/2000 financial year. A further $6.5 million recurrent was allocated for flexible respite options in 2000/2001 and a further $4 million will be allocated in 2001/2002. These funds will be supplemented by Commonwealth Ageing Carers funds that will enhance respite for older carers.

Flexible respite options include the capacity to provide centre-based respite care as well as a variety of in-home and out of home respite options. All of DADHC's local planning areas have some residential respite options as well as other flexible, out of home respite services. DADHC-funded or operated centre-based respite services are located in a variety of rural locations throughout New South Wales including:

Armidale; Dubbo; Broken Hill; Cootamundra; Deniliquin; Griffith; Hume; Bathurst; Grafton; Gunnedah; Tamworth; Walgett; Young; Wagga Wagga; Bogan; Forbes; Yass; Casino.

Is it a fact that some young people, and even children, with disabilities or acquired brain injuries are placed in nursing homes because there are no available respite beds?

DADHC is not aware of any children with a disability who have been placed in nursing homes because there are no available respite beds.

Nursing homes are administered through the Commonwealth Department of Health and Aged Care. Officers of DADHC and the Commonwealth are concerned about the inappropriate placement of younger people with a disability in residential aged care facilities. DADHC is currently developing policies for two target groups which intersect with the aged care system and the disability services sector. One of these is younger people with a disability in residential aged care facilities. In the interim, programs such as Attendant Care and the Service Access System have been successfully preventing inappropriate placements.

What steps are being taken to address the shortage of respite accommodation?

See earlier answer.

What is being done to ensure that respite facilities are appropriate for the persons concerned?

DADHC has commenced implementing the recommendations of the Respite Review Working Party (2000), which aim to improve the flexibility, capacity and quality of respite care services in NSW. In addition to directing new funds towards the provision of additional respite care services, this work will result in improvements to the operation of respite care services by improving the coordination of respite care funding and provision across programs and levels of Government.

LOGGING PROTESTS

The Hon. CARMEL TEBBUTT: On 24 October the Hon. Ian Cohen asked me a question without notice concerning logging protests. The Minister for Forestry has provided the following response:

The allegations of irresponsible action by logging contractors and New South Wales Police have been investigated by officers of State Forests or are under investigation by the police.

My administration is committed to the peaceful implementation of the New South Wales Forest Agreements and the lawful operations of the timber industry. When protests do occur, State Forests' first priority is to ensure the safety of the public and timber workers. This includes ceasing operations should protestors approach within an unsafe distance, directing forest protestors out of the area where harvesting occurs and where necessary, closing the forest.

The Forestry Regulations clearly deal with the issue of safety. Clause 69 (1) (a) of the Forestry Regulations 1999 specifically prohibits the approach of any unauthorised person within 100 metres of a person operating harvesting machinery. This is provided to ensure the safety of operations in an inherently dangerous environment and cannot be responsibly ignored. In addition the regulations at clause 69 (1) (b) specifically prohibit persons from interfering with harvesting machinery. This is to prevent persons from deliberately damaging, disabling or immobilising machinery involved in legitimate forest management activities and to ensure State Forests can meet its legal obligations to supply timber to the timber industry in accord with Government commitments.

Any specific information concerning arrests in the forests should be referred to the police.

Complaints about any alleged inappropriate actions by police or State Forests officers should be addressed by protestors directly to the police administration or to State Forests' regional managers so that specific claims or issues can be considered or addressed.

PERISHER VALLEY SKI LODGE LEASES

The Hon. CARMEL TEBBUTT: On 24 October the Hon. Malcolm Jones asked me a question without notice concerning National Parks and Wildlife Service Perisher Valley head leases. The Minister for the Environment has provided the following response:

The Government has engaged Senior Counsel Bret Walker to consider the various options for leasing and management of the Perisher Range resorts.

I understand that Mr Walker has undertaken consultation with key stakeholders, including the Ski Lodges Organisation of Perisher, Smiggins and Guthega, the National Parks Association and the Kosciusko Chamber of Commerce. I also understand that Mr Walker is expected to report soon.

The recommendations in Mr Walker's report will be carefully considered in terms of the conservation and financial implications of leasing options before any decision is taken.

Questions without notice concluded.

[*The President left the chair at 1.05 p.m. The House resumed at 2.30 p.m.*]

PARLIAMENTARY REMUNERATION AMENDMENT BILL

STATUTORY AND OTHER OFFICES REMUNERATION AMENDMENT BILL

STATE REVENUE LEGISLATION FURTHER AMENDMENT (No 2) BILL

Bills received.

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

Motion by the Hon. John Della Bosca agreed to:

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

Bills read a first time.

PUBLIC FINANCE AND AUDIT AMENDMENT (AUDITOR-GENERAL) BILL

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

STANDING COMMITTEE ON STATE DEVELOPMENT

Interim Report: Genetically Modified Food

Debate resumed from 14 November.

The Hon. PETER PRIMROSE [2.36 p.m.]: I move:

That this debate be now adjourned until the next Wednesday on which committee reports take precedence.

The House divided.

Ayes, 31

Mr Breen	Mr Harwin	Mr Ryan
Ms Burnswoods	Mr Hatzistergos	Ms Saffin
Mr Corbett	Mr M. I. Jones	Mr Samios
Mr Della Bosca	Mr R. S. L. Jones	Ms Tebbutt
Mr Dyer	Mr Kelly	Mr Tingle
Mr Egan	Mr Lynn	Mr Tsang
Ms Fazio	Mr Macdonald	Mr West
Mrs Forsythe	Mr Moppett	
Mr Gallacher	Reverend Nile	*Tellers,*
Miss Gardiner	Mr Pearce	Mr Jobling
Mr Gay	Dr Pezzutti	Mr Primrose

Noes, 5

Mr Cohen
Mr Oldfield
Mrs Sham-Ho
Tellers,
Dr Chesterfield-Evans
Ms Rhiannon

Question resolved in the affirmative.

Motion agreed to.

WORKERS COMPENSATION LEGISLATION FURTHER AMENDMENT BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [2.44 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have incorporated in *Hansard* the second reading speech that was delivered yesterday in the Legislative Assembly. I will then make further comments on the bill.

Leave granted.

In July this year Parliament enacted the Workers Compensation Legislation Amendment Act 2001. Its primary objective was to put in place measures to prevent disputes arising and to provide a simpler, fairer and faster system for resolving disputes in the workers compensation system. This legislation was a vital stage of the Government's overall reform program for workers compensation in New South Wales which was announced in June 2000. The Government's July 2001legislation addressed issues with dispute resolution in relation to claims under the statutory scheme. It did not significantly address claims by injured workers for damages at common law and concerns in relation to both the increasing numbers and costs of such claims.

As honourable members would be aware, measures to amend common law arrangements were included in the Government's March 2001 bill but were subsequently removed from the successor to that bill, the Workers Compensation Legislation Amendment Act 2001. In May this year the Government agreed with the Labor Council and the Workers Compensation and Workplace Occupational Health and Safety Council—referred to as the council—that there would be further consultation in relation to those areas of particular concern in the March bill, namely benefit entitlements for permanent loss, common law entitlements and the proposed claims assessment service.

An extensive consultative process involving many meetings between the Government, WorkCover and the Labor Council resulted in agreement being reached on most points, with the previously proposed claims assessment service being replaced by a Workers Compensation Commission. The Workers Compensation Legislation Amendment Act 2001 subsequently established the commission as well as introducing the use of permanent impairment assessment guidelines. All parties to the consultation process agreed that the amendments relating to common law should be deferred whilst an independent inquiry was carried out. The Government appointed the Hon. Justice Terry Sheahan of the Land and Environment Court to conduct the inquiry into the common law issues.

The inquiry was asked to consider and make recommendations on an appropriate threshold for recovery of common law work injury damages, to develop incentives to reduce the number of common law claims made and to recommend ways to make the processing of common law matters more efficient. The inquiry was conducted in a highly consultative manner and this is specifically recognised in the report. This included an expert reference group made up of employer, employee and government representatives. The inquiry was conducted against the background of the scheme's significant and growing deficit, which was $2.18 billion as at December 2000 and which has since further deteriorated to just over $2.75 billion as at June 2001.

I have been advised by WorkCover that in 2000-2001 there were approximately 2,000 common law claims. However, in view of proposed changes, these claims have been rising rapidly and are currently being filed at the rate of approximately 500 per month. Since the conclusion of the inquiry and the provision of the inquiry's report to the Government at the end of August this year, the Government has consulted the Labor Council and Workers Compensation and Workplace Occupational Health and Safety Council on the inquiry's recommendations. This bill will give effect largely to the recommendations of the inquiry and represents the outcome of that consultative process.

The bill contains measures that may be divided into three main areas, the first group being those measures relating to the appropriate threshold for common law claims and changes to statutory benefits. The second group relates to improved processes for accessing common law. The third and final group is a number of miscellaneous measures, including the restriction of commutations and the repeal of private underwriting provisions of the Workplace Injury Management and Workers Compensation Act 1998. As to the first group of measures, a significant amount of the inquiry's time was absorbed by considering the threshold for bringing a common law claim. The inquiry considered a range of proposals for establishing a threshold, noting both the need to make proper restitution for workers who can prove negligence and the need to care for all injured workers, irrespective of fault. It is observed in the inquiry's report:

> Common law claims remain highly contested, incurring high legal and investigation costs. The number of claims made on the Scheme is accelerating such that disposing of them, whether by settlement or judicial determination, is now costing the scheme substantial 'transaction costs', including fees paid to service providers like doctors and lawyers.

The Government is concerned that notwithstanding the fact that common law claims comprised 2,000 out of a total of 160,000 claims for workers compensation in 2000-2001, the cost of these claims is disproportionate to the total benefits and costs paid by the scheme for the vast majority of claimants. The inquiry received substantial evidence indicating that common law claims by workers with demonstrably less, rather than most, serious injuries and consequences than envisaged by the threshold in the legislation are now being made.

It is worth putting the impact of common law claims and their high transaction costs in perspective. Each year in New South Wales of the approximately 160,000 workers who lodge claims for workers compensation, the great majority—140,000—recover fully and do not suffer any permanent physical or mental loss as a result of their injury. Approximately 80,000 claims are for medical expenses only, that is, the worker does not take any time off work. A further 30,000 claims are for periods of less than five days away from work, and in a further 30,000 claims, the worker is absent for more than five days, but does not suffer permanent impairment. Of the 20,000 workers suffering a permanent impairment and qualifying for common law or non-economic loss benefits, the majority have less serious losses. The report of the inquiry notes at page 4:

> If the common law component of the scheme continues to expand, the funds available for the statutory benefits required by the overwhelming majority of injured workers must reduce, thus putting more pressure on those workers to seek a common law option, or a commutation of life-long statutory benefits.

To address this imbalance, the inquiry recommended a single threshold of the 20 per cent permanent impairment. The report of the inquiry explicitly rejects the proposition that only the workers with most serious and permanent injury—often referred to as catastrophic injury—should be entitled to recover damages. Rather, the inquiry took the view on the evidence presented that a threshold of 20 per cent would allow a broader class of workers to have access to a common law remedy. However, after consultation with the Labor Council the Government has accepted the view that with the abolition of the second gateway, a lower threshold of 15 per cent is appropriate. The bill gives effect to this commitment. When there is a dispute as to the degree of permanent impairment of an injured worker, the dispute must be referred to an approved medical specialist [AMS], who will issue a conclusive medical certificate. The decision of the AMS will be appellable to an appeal panel consisting of two AMSs and an arbitrator.

As also recommended by the inquiry, schedule 1.1 to the bill provides that the recovery of common law damages will be restricted to damages for past economic loss due to loss of earnings and damages for future economic loss due to the deprivation or impairment of earning capacity. As to damages for non-economic loss, the report of the inquiry recommends that all such claims should be available only through the statutory scheme. Schedule 1.1, therefore, provides for the abolition of the existing entitlement to recover common law damages for non-economic loss such as pain and suffering. As a consequence of damages for

lost earnings only being recoverable at common law, and as recommended by the inquiry, schedule 1.1 also repeals the current requirement to choose or elect between statutory non-economic loss compensation under sections 66 and 67 of the 1987 Act or common law damages.

The legislation will continue to provide that if an injured worker's common law claim for economic loss is unsuccessful, the worker continues to be entitled to the full range of benefits in the statutory scheme, including non-economic loss lump sums, weekly payments and payment of medical care. When an injured worker successfully recovers common law damages for economic loss, this will prevent recovery of any further statutory compensation and require repayment of any weekly benefits already paid. An injured worker will be entitled, however, to remain on statutory benefits while pursuing a common law claim. The bill, as well as providing that all claims for non-economic loss are to be made under sections 66 and 67 of the Workers Compensation Act 1987, provides in schedule 2 for greatly increased benefits under section 66, particularly to the most seriously injured workers, by increasing the maximum amount of compensation from the present figure of $121,000 to $200,000. This substantial increase in statutory non-economic loss benefits is the first such increase in nine years.

Schedule 2 also provides for a new process to distribute non-economic loss benefits under section 66. Unlike the current arrangement that provides for a straight application of a percentage loss to a maximum available under legislation, resulting in relatively low benefits being provided to workers with the most serious injuries, the bill provides for a system of benefit distribution according to a formula that pays more generous benefits as the level of impairment becomes more severe. The level of impairment will be determined by medical practitioners apportioning a percentage "whole person impairment" rating under the WorkCover impairment guidelines. These guidelines have been developed by working parties comprising appropriate medical specialists identified by WorkCover and the Labor Council of New South Wales.

As honourable members would be aware, the bill passed last session provides for compensation for psychiatric or psychological impairment. Currently, no compensation of this type is payable for permanent psychiatric or psychological impairment under the table of disabilities. This new benefit is intended to provide compensation for workers injured through workplace trauma, for example, a worker injured in an armed hold-up or from violence in the workplace. Given that it is difficult sometimes to separate this type of injury from general life stressors and in view of the financial position of the scheme, this new benefit is to be provided subject to a threshold. Accordingly, a threshold of 15 per cent for both section 66—permanent impairment compensation— and section 67—pain and suffering—benefits for psychological injury has been selected.

In developing the guides for the assessment of psychiatric and psychological impairment, two models were considered by the working parties responsible for developing the guides: the psychiatric impairment rating scale [PIRS], which was developed by a group of New South Wales psychiatrists, and the scale adapted by the Australian Psychological Society [APS]. Agreement could not be reached by the psychiatric and psychological impairment working party. The Government's position is that the guides should be based on a modified PIRS scale for the purposes of assessment of psychiatric or psychological impairment. Of the two scales it appears that the PIRS scale is the most appropriate for use in assessing permanent impairment for compensation purposes. Implementation of these guides will be closely monitored.

In specifying the sections 66 and 67 thresholds for psychological impairment in the legislation, we are honouring the commitment given by the Government in July this year during the passage of the Workers Compensation Legislation Amendment Bill 2001 to include the relevant thresholds in the principal legislation, rather than prescribing them by regulation and allowing them to be altered by regulation in the future. Compensation will continue to be available under section 67 for pain and suffering, which compensates for the impact on the life of the individual, caused by the impairment suffered. This benefit has been made available as an additional benefit to more seriously injured workers, and so has always had a threshold of 10 per cent. This 10 per cent threshold will be continued by the bill, except for psychological or psychiatric injury, which will have a 15 per cent threshold. As noted above, the inquiry into common law recommended that only lost earnings be compensated under common law and that the cost of future care be covered under the statutory scheme.

Schedule 3 introduces a new entitlement to statutory compensation for domestic assistance that is reasonably necessary to be provided to an injured worker as a direct result of the injury, but only where the degree of permanent impairment of the injured worker resulting from the injury is 15 per cent or more, with exceptions for short-term special needs. These substantial improvements to non-economic loss benefits and the introduction of a new entitlement for domestic assistance are being provided mainly out of the estimated savings in legal and investigation costs in the scheme. Workers with comparatively moderate degrees of injury, such as back injuries, are expected to receive a similar amount to that currently provided by the table of disabilities. The provision of increased statutory benefits is intended both to ensure that the long-term care needs of the most seriously injured workers are met by the statutory scheme, and to make provision for a range of seriously injured workers to seek common law remedies, if appropriate, to their circumstances.

The second group of measures, as contained in schedule 1.2, gives effect to the common law inquiry recommendations relating to improved processes for common law claims. The report of the inquiry observed from evidence presented that common law claims were more than twice as expensive to process compared to statutory benefit claims. The report also noted and accepted that the financial position of the scheme required that savings be made, and in Justice Sheahan's view, "savings must and can be found among the transaction costs associated with the common law component of the scheme …". Accordingly, the bill adopts the inquiry recommendation that a pre-litigation process be introduced for common law work injury damages claims. The pre-litigation process proposed by the bill requires the parties to exchange information early, respond promptly to offers of settlement and, wherever possible, settle matters without the necessity of filing proceedings in the court.

The Government is adopting all of the recommendations made by the common law inquiry in relation to the processing of common law claims, with only one minor addition, that is, to provide for a worker to give an early indication to the insurer of allegations of negligence. This will enable the insurer to be in a position to respond to the claim within 28 days. The Government proposes, in view of the current extreme escalation of claim numbers for common law claims and the urgent need to curb costs, that no further claims under the current system be permitted other than those claims that have been filed at the date of the introduction of the bill into Parliament. This step has been taken in order to prevent a further strain being placed on the scheme's financial position. Claims are currently being filed at the rate of 500 per month.

> In addition to threshold levels, increased benefits and process measures, the bill contains a number of other initiatives. Schedule 5 makes it clear that the jurisdiction of the Workers Compensation Commission extends to all matters arising under the 1987 and 1998 Acts, whether or not relating to a new claim, except those matters concerning existing claims, which will remain with the Compensation Court. The court will also retain jurisdiction in relation to matters that are related to a claim, even though the claim has previously been determined, such as termination disputes under section 52A, reviews under section 55 and apportionment matters. Once the appropriate transitional regulations are made to transfer existing claims, the related matters will also be transferred.
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> Schedule 6 provides for the repeal of those provisions enabling private underwriting. The commencement of these provisions has been deferred twice, primarily on the basis of unaffordability. A further review will be conducted to identify the preferred option for underwriting the scheme. Accordingly, it is appropriate that the current provisions should be repealed. Schedule 8 provides for the restriction of commutations. This recommendation arises as a result of a concern raised by the final report of the inquiry into common law to protect the scheme from potential pressure points. This warning has been borne out by the recent scheme actuarial valuation, which indicated that commutations were spiralling out of control and have become a significant driver for the scheme's rapidly deteriorating financial position.
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> Further investigative work commissioned by the Government indicates that the current commutation arrangements have completely failed to reduce the number of open claims, and in fact have generated a demand for lump sum commutations from workers with no ongoing entitlement to further benefits. In view of the financial position of the scheme, the Government has no alternative but to follow the prudent course of action and to restrict commutation to those with a permanent impairment of 15 per cent. The worker must also have a current entitlement to weekly benefits and all return-to-work options must be exhausted. As with common law claims, the current extreme escalation of commutations and the financial position of the scheme indicate that an immediate restriction of commutations is warranted. Any commutations or disputes about weekly benefits filed in the court before the date of introduction of the bill will be able to be dealt with by way of commutation until 1 February 2002.
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> A further matter addressed in schedule 9 to the bill is the extension of the Uninsured Liability Indemnity Scheme to common law work injury damages. In cases where an employer is uninsured or cannot be found or identified, the bill authorises the injured worker to make a claim for work injury damages on the ULIS scheme. Given the capacity to recover such payments from employers, the initiative will assist with encouraging employers to take out insurance. Finally, schedule 7 to the bill clarifies the jurisdiction of a Local Court constituted by an industrial magistrate to deal with proceedings for offences and applications for related orders under occupational health and safety and workers compensation legislation. Overall the reforms outlined in the legislation represent a responsible package of measures to allow access to common law to those workers most in need but at the same time providing the bulk of workers injured in employment-related accidents with access to much improved statutory benefits. I commend the bill to the House.

There has been a long and passionate debate on WorkCover reforms, and with good reason. Workplace injuries are costly for both employees and employers. In many cases the cost is a very personal one to the individual worker and his or her family. There is a need to maximise the efforts of seeing injured workers return to a normal life. It stands to reason that all parties involved expect a fair and cost-effective system. As I have stated many times before, the need for reform is self-evident. It was even self-evident in 1925 when the Lang Government introduced the first Workers Compensation Bill. The Government of the day saw problems with the then system, which was based on an English common law model. One of those problems was the high incidence and cost of litigation. The Minister for Labour and Industry in that Government, John Baddeley, said in his second reading speech:

> To settle disputes which may arise under the Act, a workers compensation commission of three members is to be established. By having a specialised tribunal of this nature, the delays and inconvenience which exist under the court system will be obviated.

He went on:

> In removing compensation from the atmosphere of the court, the Government is satisfied that there will be greater expedition in the hearing of disputes and that they will be settled with far less friction than at present and that the operations of this tribunal will be greatly to the benefit of both employees and the workers.

A bad system means that more rules, both formal and informal, are developed by the various stakeholders for their protection rather than for the compensation of workers. Entrenched interests, and the fact that people tend to persist with what they are used to, can act against needed change being supported. Real reform in workers compensation must focus on injured workers. It has to focus on co-operation between the stakeholders, ancillary professionals and the bureaucracy. It has to ensure co-operation with injury prevention and injury management. I must stress that by "stakeholders", as I said before, I mean the injured workers and their representatives, the trade unions, and the employers who pay for the scheme.

We must remember at all times that the system exists for injured workers. The Government has been positioned in some quarters as being anti-lawyer. This is not so. I have not been anti-lawyer during these debates. I have not said anything detrimental or unfair about the role of lawyers in the scheme. However, I have been concerned about the emergence of a litigation-based approach to workers compensation—the so-called "ambulance chasing" approach. The Government acted by banning advertising most closely associated with ambulance chasing. I am concerned about the impact that an overtly litigious scheme has on both fairness and cost. This can often standards and principles underpinning the scheme eroded by the wear and tear of legislation and judicial dispute.

I am concerned that many of the disputes could be better solved by providing incentives and motivations for insurers, employers, ancillary professionals and lawyers to be reasonable and focused on the workers' recovery and on fair compensation rather than on the process within the scheme. I do not believe that any of these reservations make my stand or the Government's stand anti-lawyer or, for that matter, anti-doctor. Indeed, I emphasise that when it comes to important legal issues, we want any worker who requires it to have access to the best possible legal advice and representation as required in the scheme.

I emphasise that lawyers who provide their knowledge and use their skills are entitled to be properly remunerated, so long as that knowledge and those skills are based on the conduct of actual legal work. The purpose of this reform is to rescue a system that is bogged down in procedural issues to do with service providers and the systematic blockages and artificial protections in the scheme that have grown up over the years.

The current focus of the scheme is not on the needs of injured workers, nor on the cost burden that premiums are for the State's employers. As most people realise, the system has needed a big shake-up. People do not like change; all sorts of institutions with vested interests will resist change. They will often capitalise and use peoples' fears to convince them that change is not in their interests and can only be bad. If we are to progress the workers compensation system and the occupational health and safety regime in this State, there will be risks for both workers and employers.

Will the early acceptance of liability improve workers' recovery from injury, or create new employer liabilities? Is the scheme sufficiently safeguarded from rorting? Are the new compliance strategies sufficiently free of red tape to ensure business costs are not further increased, threatening job security? Or will the new compliance strategies deliver a fair and level playing field—a playing field where employers who meet their responsibilities no longer suffer competitive disadvantage? The new psychiatric guidelines have been developed by eminent specialists, but will all workers be fairly compensated? Or will they be encouraged to regard all stress as incapacitating? Will the new insurer remuneration package change insurers' behaviour and improve the delivery of services to injured workers and the case management of individual claims?

These are some of the challenges we face in reforming the scheme. These are the sorts of challenges that anyone would have to deal with to rescue the scheme as it is and as it has become. The Government is committed to closely monitoring the new scheme and addressing the risks to which the Government and stakeholders are exposed by rigorous evaluation and monitoring—the evidence-based approach. The Independent Pricing and Regulatory Tribunal will review the operations of the new commission. The review of the premium discount scheme is due to commence next year. The injury management pilots will be evaluated and reported on to the Parliament.

The Nile committee will finalise its report in July 2002, in time to inform the Government's decisions about scheme design. We will be responsive if there are indications that any of the new strategies are not working. We will measure the success of the reforms by the extent to which they eliminate unnecessary delays and by the extent to which they provide a fair system in an efficient and financially sustainable way. We will balance reform with stability and allow the new system time to settle. We are in the process of a new approach to community education. This is a two-way street where the users of the system can get information about how it works from different sources. We want a system that keeps the focus on injured workers. These reforms give back $92 million in savings in improved benefits for the injured. Our savings from the reform process are $210 million. These savings will begin the turnaround in the scheme, but they are only one measure. Cultural change and the vastly improved results for injured workers cannot be measured purely in dollar terms.

A rigorous concentration on injury management and injury prevention—and a Government and a scheme, a work force and employers totally focused on those two objectives, injury management and injury prevention—will deliver long-term improvements for the workers and the financial viability of the scheme. We cannot expect a miracle overnight. Change will take longer than 12 months. With large systems we witness five to seven new trends. Responsible governments, responsible oppositions and responsible Independent members I am sure recognise this. The workers compensation system has an ongoing public interest beyond the length of electoral terms. In time, the New South Wales workers compensation scheme will meet the changing needs of both injured workers and employers. I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [2.54 p.m.]: I speak to the Workers Compensation Legislation Further Amendment Bill on behalf of the Opposition. I state from the outset that it is not the position of the Opposition—as has been stated in the other place—to oppose this legislation. However, I

have some concerns about the process by which the bill is being pushed through the Legislative Council today. In any other circumstance one would expect the legislation to have been introduced in the Legislative Council. Given the magnitude of the legislation that we are being asked to consider, it is only fair that members of this Chamber have sufficient opportunity to consider these proposals.

This scheme is losing $3 million a day, according to the Government's own actuarial calculations. The scheme is now $3 billion in deficit. Yet honourable members are being asked to make a decision on these comprehensive measures in a short space of time. Of course, the Opposition has had an opportunity to speak about this legislation with many stakeholders from both sides of the political fence and is therefore confident about the position it has taken in the Legislative Assembly. However, I recognise that crossbench members, like Opposition members, received this legislation only yesterday, prior to entering the Parliament.

It is a bit rich for the Government to introduce legislation of such magnitude—even though draft legislation was made available some weeks ago, it was amended in a number of ways—and ask crossbench members to simply accept a measure they have been dished up at this very late stage and pass it today. I do not know how crossbench members will vote on this bill. That is a matter for them. If we were to follow due process, members of the Legislative Council would have proper opportunity to consider this legislation. The Government asserts that these amendments are minor or insignificant. That is neither here nor there. The point is that the Government, at the very last moment, has cobbled together these legislative changes.

Even the draft bill, which was given to us at 6.06 p.m. on 26 November, was pushed through the Legislative Assembly on 27 November. The Government hopes that once again Opposition members will accept what is given to them and will push this bill through the Legislative Council this evening. Whether it is intended that this legislation be considered in Committee is a matter for the Government. I feel there should be an opportunity for members of this Chamber, pursuant to its role as a House of review, to thoroughly consider this legislation.

This bill could have been introduced yesterday in the Legislative Council. I recognise that some crossbench members have a view about allowing debate on this legislation to proceed today. But had the bill been introduced in this Chamber yesterday, due process would have resulted in the debate taking place next Tuesday. The urgency is not so much about the need for this legislation; the urgency is more about fitting in with the Government's social calendar leading up to the Christmas recess. The Government wants to clear the decks. We owe it to the people of New South Wales to uphold our rights as members of the Legislative Council, particularly crossbench members, to have the opportunity to satisfy ourselves that the amendments are proper and fair.

The Hon. John Jobling: As members of a House of review.

The Hon. MICHAEL GALLACHER: This House of review should maintain its role and scrutinise these amendments. Honourable members were fairly busy yesterday. The House resumed at 2.30 p.m. and dealt with a considerable amount of business in the afternoon. But the House then adjourned early. If the Government were serious, at least it could have introduced this bill yesterday and given us some notice of it. But, no, the Government is intent on trying to push this legislation through as quickly as possible. The Government introduced this bill in the Legislative Assembly last night and pushed it through, and now it is pushing the bill through this Chamber.

I appeal to crossbench members who are asserting that the Coalition should support the Government's position in bringing this legislation on today at least to consider the normal process in the Legislative Council in unexceptional circumstances. Had this legislation been introduced yesterday in this Chamber, we would have been debating this legislation next Tuesday, giving honourable members proper opportunity over the next couple of days to absorb these measures. What I intend to ask for by way of adjournment is not unfair. I do not believe members would disagree with my proposition.

The Opposition is not obfuscating its position. That position was put very firmly in the Legislative Assembly last night. I am seeking an opportunity to allow crossbench members to consider the legislation in more detail and we can debate it next Tuesday. This bill is significant. One need only look at some of the answers that were given last week in the hearings of General Purpose Standing Committee No. 1. A number of witnesses were called. Even the Government's actuary was called, and we saw confusion about the legislation and how the Government wishes to address the unfunded liability. There is confusion out there and the Opposition is asking for a fair time to allow crossbench members to consider the legislation. So, I move:

That this debate be adjourned until Tuesday 4 December 2001.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.00 p.m.]: The Leader of the Opposition has failed to mention to members of the House that the bill we are debating was forwarded to every member of the crossbench on Tuesday 13 November and handed to the Leader of the Opposition and to the Deputy Leader of the Opposition on the same day.

The Hon. Michael Gallacher: There is something wrong with mine: it says 26 November.

The Hon. IAN MACDONALD: Yes, I will explain that in a second. The basic bill we will debate was delivered to the crossbench on 13 November and to the Leader of the Opposition and to the Deputy Leader of the Opposition on the same day. It was delivered the following day to members of the Workers Compensation Advisory Council. The changes in the bill are precisely the changes that were put forward by the Labor Council of New South Wales and agreed to by the Government in a series of consultations over the past fortnight. The changes deal essentially with the threshold. They reduce the common law threshold from the 20 per cent level that was recommended by Justice Sheahan. The change in the bill is to lower that, in keeping with the Labor Council's submissions, to 15 per cent.

The Hon. John Jobling: Point of order: The motion before the House is that this debate be adjourned until Tuesday. The question of what is or is not in the bill is immaterial. The question we must consider is whether debate should be adjourned. We are not entering into a second reading debate on the bill and matters contained therein.

The Hon. IAN MACDONALD: To the point of order: The motion seeks to adjourn this debate until next Tuesday. The Leader of the Opposition has moved that motion because he says that the crossbench and others have not had time to consider the bill. Our position is that honourable members have had two weeks to consider the bill. I assume the Leader of the Opposition, having received a copy of the bill from the Government, would have circulated it to his members. So, it is reasonable to presume that members of the Opposition have had ample opportunity to look at the bill.

The DEPUTY-PRESIDENT (The Hon. Dr. Brian Pezzutti): Order! The matters referred to by the Hon. Ian Macdonald relating to the bill are substantially the reasons being advanced by the Government for not wishing to support the motion to adjourn the debate. Consequently, he is in order.

The Hon. IAN MACDONALD: The Government, having circulated the bill more than two weeks ago to the crossbench, to the Leader of the Opposition and his deputy and to the advisory council, has provided honourable members with more than two weeks to look at the bill. I know honourable members have taken the opportunity, have had a number of discussions and are prepared to discuss the essence of the bill. They have followed what has been sent to them and have prepared themselves for it.

The Hon. John Jobling: Point of order: With respect to my colleague and the argument he puts, I remind the House that a draft bill was circulated. The actual bill was only presented to the other House yesterday. I suggest that the two bills are different and therefore the argument the honourable member is putting is canvassing the bill.

The Hon. Amanda Fazio: Point of order: I wish to raise a point of order on the Hon. John Jobling's point of order. The honourable member is debating—

The DEPUTY-PRESIDENT (The Hon. Dr. Brian Pezzutti): Order! When the Hon. John Jobling has completed his point of order I will hear the Hon. Amanda Fazio on the point of order.

The Hon. John Jobling: I put to you that what is suggested by a draft green paper or white paper is irrelevant. The actual bill was only presented to the Legislative Assembly yesterday. Therefore, the question of the time required, as the Leader of the Opposition put forward, is factual. Therefore, the question we are debating is what I put, that the honourable member is canvassing the bill and is not debating the question of the adjournment.

The Hon. Amanda Fazio: Point of order: The point of order taken by the Hon. John Jobling was not a point of order. He was entering into debate. It is the same sort of point of order that he has been taking on other members. He is not taking a technical point of order in accordance with standing orders, he is furthering debate on the argument. I ask you to rule that there is no point of order.

The DEPUTY-PRESIDENT (The Hon. Dr. Brian Pezzutti): Order! The matter raised by the Hon. Amanda Fazio is not a point order. The Hon. John Jobling was addressing the issue he raised in his point of order. The Parliamentary Secretary may wish to respond to the objection of the Hon. John Jobling.

The Hon. IAN MACDONALD: Again, the point I am making is related to the motion moved by the Leader of the Opposition. The Leader of the Opposition is trying to put forward a view that because honourable members have not had time to consider the bill we cannot even have a second reading debate today.

The Hon. John Jobling: How can we have that debate when we have not had time to study the bill?

The Hon. IAN MACDONALD: The point is that honourable members have had time to study it. As I have pointed out to be House, the only substantive changes were ones—

The Hon. John Jobling: There are substantive changes?

The Hon. IAN MACDONALD: The only changes—substantive changes, yes—were in relation to reduction of the threshold from 20 per cent to 15 per cent, but the majority of clauses in the bill have not been altered.

The PRESIDENT: Order! There is no point of order. The honourable member is well within the bounds permitted for explaining the reason that debate should not be adjourned. The honourable member may continue.

The Hon. IAN MACDONALD: I have canvassed the essential issue of whether honourable members have had time to consider the issues. I was clearly showing that honourable members have had more than two weeks to consider the issues. Also, we must be careful because any further significant delay in the process that commenced in March will potentially create problems with the January start date. In the last session the Government agreed to defer the provisions dealing with common law thresholds and formulas. Since then we have had a judicial inquiry, extensive consultation with all stakeholders and briefings with many members of this House. There has been ample debate about these issues. In the past five or six years I doubt whether I have canvassed more issues relating to a bill than the issues relating to this bill. In May and June of this year the issues before the House today were canvassed at considerable length before the debate was adjourned. Therefore, honourable members have known about the issues since that time. The issues were very clear: what the threshold level will be, whether the threshold will be zero to 25 per cent, 30 per cent or whatever. The issues were placed before the House at that time.

The Hon. Michael Gallacher: Is the 30 per cent threshold a future Government reform?

The Hon. IAN MACDONALD: There is no 30 per cent threshold. I am canvassing a series of options. The Leader of the Opposition knows well that the Government has put forward a threshold of 15 per cent. I am saying that many of the issues encompassed in the bill today were discussed clearly during the previous second reading debate. Honourable members have had a long time to canvass the issues, and I believe we should proceed to debate the bill.

Reverend the Hon. FRED NILE [3.12 p.m.]: All honourable members appreciate that this bill is important but they need time to consider the bill. Although honourable members have had draft copies of the most recent amendments, particularly those dealing with the threshold level, which are substantial, I move:

> That the question be amended by omitting all the words after "until" and inserting instead "5.00 p.m. Thursday 29 November 2001".

That means that debate on the second reading of this bill will be adjourned until 5.00 p.m. tomorrow, during time for Government Business.

The Hon. RICHARD JONES [3.12 p.m.]: I support the sensible compromise of Reverend the Hon. Fred Nile. Once again, he has come to the rescue of the Government and the Opposition, because he works for both sides. It is true to say that many crossbench members do not have their speeches ready and are not fully au fait with the changes in the bill. Of course, my speech is ready; I am ready to speak at any moment. As some honourable members are not ready to speak on the bill, I support the amendment moved by Reverend the Hon. Fred Nile. It is a considerable compromise, which will enable debate on the second reading of the bill to proceed tomorrow.

Amendment of motion for adjournment agreed to.

Motion for adjournment as amended agreed to.

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

Second Reading

Debate resumed from an earlier hour.

The Hon. DOUG MOPPETT [3.14 p.m.]: Before question time when I was speaking to this bill I had a few remarks to make, and I shall address them succinctly now. Honourable members are aware of the extreme delicacy of the subject of care and protection of children. We approach with some forbearance the performance of the Department of Community Services while remembering that it probably undertakes, on behalf of not only the Parliament and the Government but also the whole community, one of the most difficult tasks performed in our society. Nevertheless, it would not be unfair to say that the Department of Community Services has been haunted in recent times by a reputation of lurching from crisis to crisis and being unable to develop a consistent strategy for dealing with these crises.

It can be argued that matters relating to the care and protection of children are, by their own nature, crises. However, I am saying that the system is constantly in crisis, not that each individual situation is devalued by describing it as lurching from crisis to crisis. In this bill we detect a desire on the part of the Government to narrow its exposure to some of these crises. It is a totally unworthy objective for the Government to set aside the welfare of children who are being placed in kinship control, and the Government wishes to absolve itself of the responsibility of further surveillance. Earlier I indicated that I hoped amendments would be moved to require the Government at least to monitor arrangements made by courts to ensure that the welfare of children still remains paramount in new relationships that are being formed.

Once again I express concern that these arrangements will prove much more difficult to implement than is indicated by simply reading the bill and the intentions of the bill, and the machinery by which it is hoped they will be implemented. In particular, I emphasise the difficulties that I foresee in specific cases that may occur in rural and remote areas, where so often the problem has been a lack of support services for families. Had the services been available and applied, it is possible that the intervention that triggers the whole process would not have been necessary. However, the Opposition will support the major thrust of the legislation. We hope that it will prevent some tragedies from occurring. I cited overseas examples but I think everyone knows that such tragedies have also occurred in Australia, where the intervention has been described as "too little" and "too late", and has certainly lacked the permanency and reliability that is essential to the growth and development of children.

Behind all this is the knowledge that often temporary orders are made and children are shuffled from one form of out-of-home care to another, be it foster care or whatever; the development of these children is often stunted or at least jeopardised by the extempore arrangements that are made while efforts have been made to try to re-evaluate the capacity of the natural parents to take on again their parental responsibilities.

I think there is virtue in the idea of decisive action, provided that it is accompanied by a proper process. I certainly believe that children could benefit from all permanent arrangements upon which they could build a new framework of reference to fit the experiences of life that are common to all of us. We all know that life does not offer unbridled joy. We cannot prevent young people experiencing vicissitudes that life presents, but we need to ensure that they have secure foundations in a stable family life. If that is not possible with their natural parents, then the very next best substitute should be availed of whenever possible. It is hoped that this legislation will lead to such an outcome. The amendments that will be moved at the Committee stage are vitally necessary. The Coalition will certainly vigorously support them, as it will support the passage of the bill to the second reading stage.

The Hon. HELEN SHAM-HO [3.20 p.m.]: I am pleased to support the Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill No 2, which seeks to improve the case management of children and young persons in out-of-home care who have been removed from their parents because of abuse or neglect. The bill will require long-term case planning for children in circumstances in which the Children's Court has deemed that there is no realistic possibility of restoration to the child's birth parents. The objective, as I understand it, is to prevent children from ending up in a series of unplanned and temporary placements. As the Hon. Doug Moppett has mentioned, it is better to have long-term planning. I emphasise that this bill does not provide for compulsory adoption but gives a greater focus to a range of permanent placement options such as long-term foster care and sole parental responsibility orders as well as adoption.

The bill replaces the draft exposure bill tabled in June 2000 by the Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Women, the Hon. Faye Lo Po'. Since then extensive public debate on the principle of permanency planning has taken place within Parliament, the child welfare sector and in the community at large. I congratulate the Minister on the consultation that has taken place. I understand that the Government received many submissions from the public following the release of the draft exposure bill and the subsequent issues paper. I am also aware that the Minister has conducted discussions with major stakeholder groups, including the Association of Children's Welfare Agencies and the Community Services Commission. In July last year the bill was the subject of a major forum organised by the Council of Social Service of New South Wales. Honourable members may recall that the forum was attended by more than 100 child welfare practitioners and community groups, and it generated quite emotional and heated debate. It is pleasing that extensive consultation on this issue has taken place over the past 17 months. Any legislation that is of such major significance to the lives of children and families deserves our careful consideration.

It is also worth noting that the bill will amend the Children and Young Persons (Care and Protection) Act 1998. As honourable members will be aware, that Act was the result of three years of extensive consultation and review by the Department of Community Services [DOCS] and passed through this House with bipartisan support in December 1998. I take this opportunity to congratulate DOCS on its great effort. It is my firm belief that we, as members of Parliament, should take a bipartisan approach to legislation regarding significant children's issues. In particular, children in need of the care and protection of the State are the most vulnerable members of society and their wellbeing must be a No. 1 priority. As someone with a background in social work, I think I can speak for all child welfare professionals when I say that children and young people are much better off in permanent care arrangements, as I stated earlier. The major problem with substitute or out-of-home care in this State is that children tend to experience numerous placements. This is destabilising for children and produces uncertainty and insecurity for all concerned, whereas permanent placement options offer children stability, security and continuity in relationships.

Unfortunately, however, it seems that many children in this State are deprived of permanent or long-term care arrangements. A recent study of children leaving care in New South Wales by the Social Policy Research Centre found that the average number of placements per child was 6.5 and that nearly 80 per cent of the young people surveyed had three or more placements while in care. This is simply unacceptable. Our children deserve better. On a more positive note, I am pleased that consultation with the Aboriginal community and Aboriginal welfare groups in relation to this bill has taken place over the past few months. This is an immensely important issue for two reasons. Honourable members will no doubt be familiar with Australia's shameful history of forcibly removing Aboriginal children from their families which, of course, resulted in the stolen generation. Given the problems currently being experienced by these members of our community, I believe it is essential that we ensure that there are safeguards concerning the placement of Aboriginal children and that they are able to maintain their cultural identity. Second, it is a fact that Aboriginal children and young people are grossly overrepresented in the care system in New South Wales.

I understand that in response to the concerns expressed by the Aboriginal community and Aboriginal groups the Minister for Community Services recently introduced a number of safeguards in relation to the placement of Aboriginal children. These included the reiteration of the Government's commitment to the Aboriginal child placement principle, amending the bill to require the consent of the Minister for Aboriginal Affairs and the Minister for Community Services before a non-Aboriginal placement can be made for an Aboriginal child, and the undertaking of regular reviews. I believe that these are steps forward.

A further issue I wish to discuss is a particular type of out-of-home care known as kinship care. For the benefit of honourable members who may be unfamiliar with the term, kinship care refers to those situations where a child or young person is cared for by relatives or friends. Kinship care is now the most prevalent form of substitute care in New South Wales. It accounts for 38.7 per cent of all child placements, or 48.8 per cent when placements with friends, neighbours or godparents are factored in, and 57.3 per cent of placements for indigenous children in care. Strangely enough, in spite of the prevalence of kinship care in New South Wales, this type of care arrangement is excluded from the definition of out-of-home care in the current Children (Care and Protection) Act. I am aware that the Coalition will move an amendment to expand the definition of out-of-home care to include children and young people being cared for by relatives. I note that this amendment does not seek to catch all kinship care arrangements but will apply only when the Minister has parental responsibility for a child by way of a court order or when the child is in the care of the director-general.

Earlier today I was briefed by advisers of the Minister for Community Services and I appreciate that those advisers took the time and effort to explain the complexity of the Coalition's amendment. They expressed

the view that acceptance of the amendment would result in a doubling of the number of children who will require more monitoring by DOCS and the Children's Guardian. It was stated that that these departments do not have the resources to be able to cope with the consequently increased workload. I was also informed that the formal monitoring process that the amendment would entail would be unnecessarily intrusive into the lives of children and young people in kinship care. With every respect to the advisers, I beg to disagree. I am not convinced by these arguments. In my view, expanding the definition of out-of-home care to include kinship care in certain situations should be welcomed for the simple fact that it is in the best interests of the child, which surely is the whole purpose of the exercise.

As I see it, the foreshadowed amendment is an extra safeguard or assurance that a child who has been placed with relatives because of child protection concerns is being brought up in a loving, safe and stable environment. The amendment also works the other way in that it recognises that some carers may have the need for ongoing support. The amendment can be viewed positively and negatively. In conclusion, I agree wholeheartedly with the underlying premise of the bill. The spirit of the bill is absolutely correct, namely, that secure and stable environments produce the best outcomes for children and young people. The bill will work to prevent a detrimental impact on children in out-of-home care that results from multiple temporary placements. I congratulate the Government on working so hard over the past 18 months to provide consultation. I also congratulate the Opposition on adopting a bipartisan approach to the bill, which I commend to the House.

The Hon. RICHARD JONES [3.30 p.m.]: This second bill was introduced after the withdrawal of the first bill following widespread industry and community opposition. With regard to the long-term case planning for children in out-of-home care, the bill requires the Children's Court to consider whether there is a realistic possibility of restoration with the birth parents and thereafter to determine what is the most appropriate long-term placement for the child.

The Minister said that the problem thus far has been the failure of the courts and child protection professionals to make judgments as to whether a child will be returned to his or her parents and that no-one is assigned responsibility for making this decision. Three weeks ago the Minister delayed the passage of the legislation and agreed to consult with a wide range of organisations in relation to Aboriginal children in non-Aboriginal placements. Serious concerns in this regard were raised by bodies such as the Sydney Regional Aboriginal Legal Service, the Aboriginal Children's Service, the Wirringa Baiya Aboriginal Women's Legal Centre and Link-Up New South Wales.

The Sydney Regional Aboriginal Legal Service—the only Aboriginal service that represents parents in care and protection matters in Sydney—stated in a letter dated 24 October 2001 that in relation to the drafting of the bill the service was not consulted at all by the Minister or the department. It said that having spoken with other Aboriginal organisations in the area, it came to its attention that the Minister was not truly forthcoming in stating that she had consulted with the community. As a result, the service requested that the debate be suspended until proper consultation with community members had taken place. The service also said:

> The care and protection of children and the welfare of our Aboriginal people is not to be taken lightly, as in the past legislative changes have been pushed through parliament, which has had a long term negative effect on our people.

The Wirringa Baiya Aboriginal Women's Legal Centre, a statewide community legal centre for Aboriginal women and children, also said that it was not consulted by the Minister or the department. The centre also requested the Minister to go no further in debate until wide and proper consultation with the Aboriginal community had taken place.

Link-Up, an organisation that assists many hundreds of Aboriginal people to locate their family members separated from them through adoption, fostering and institutionalisation, provided valuable input into the process. That organisation was well placed to articulate the needs and issues relating to child welfare having regard to damaging and devastating past policies and practices. Link-Up was a driving force in ensuring that the Minister amended the provision that if the number of non-Aboriginal and Torres Strait Islander adoptions of Aboriginal children exceeds 10 in any 12-month period it will trigger a review. Now the figure is five instead of 10. That is a commendable decision.

Aboriginal Children's Services said that it had consulted with more than 150 foster children carers and only two of those carers requested adoption. The majority of their kinship carers would not agree to or entertain the idea of completely taking away the legal rights of natural parents or communities. The Mountains Outreach Community Service added its voice to these concerns, stating that the organisation comes into regular contact with families who would most likely be affected by the proposed legislative changes. The service felt that the

strain placed upon Department of Community Services workers due to the fact that they are chronically underresourced and insufficiently supported may mean that the decisions that affect permanent change to vulnerable families may be adversely implemented.

The Community Services Commission report entitled "Forwards, Backwards, Standing Still" expressed concern that the current generation of Aboriginal children being taken into care constituted another stolen generation. The commission's report of November 2000 urged that better monitoring, accountability and training be implemented as a matter of urgent priority. In August this year the Community Services Commission recommended that urgent priority be given to build the capacity of Aboriginal children's services across the State. The commission recognised the need for self-determination and self-management of Aboriginal services, increased resources for Aboriginal services, and clear workable guidelines and policies regarding Aboriginal families and children in care. The commission found that:

> …poor casework practice and/or a lack of placement options, rather than the demands and needs of birth family, were the primary impediments to both timely restoration and good permanency outcomes.

Many organisations have pointed with growing concern to the large number of young Aboriginal people entering the care system in New South Wales. Aboriginal children are significantly overrepresented in the care system. As at 30 June 2000, 2,145 children in care in New South Wales were Aboriginal. It is important that the concerns expressed by the Aboriginal community are taken seriously. When negotiations take place on any issue affecting social justice, in particular with a welfare perspective, a meaningful and committed process is required. Visits to metropolitan, regional, rural and remote communities must take place, key organisations must be briefed, and their concerns and queries must be listened to and acted upon.

Organisations have expressed their gratitude to the Minister for deferring debate until further negotiations have taken place. Whilst this is a step in the right direction, I believe it would have been even more admirable to have undertaken the appropriate negotiations before the introduction of any legislation, rather than during its second reading, withdrawal, reintroduction and deferment, and subsequent debate on it. It is important to now get it right, given that the number of foster children is increasing. As at 30 June 1999, 7,757 children and young people were in care in New South Wales. Just under a quarter of those were indigenous, 6 per cent were recorded as having a disability, 95 per cent were the subject of a Children's Court care order, and just under 30 per cent had been in care for a year or longer.

In June 2000 the number of indigenous children and young people in care had risen to 2,145. The Community Services Commission noted that, in the main, the majority of children and young people reviewed were experiencing stable and good day-to-day care. The report notes that culturally appropriate early intervention and prevention strategies and meaningful consultation with Aboriginal communities are essential. To ensure that children in State care are properly cared for, the bill must provide for appropriate resources, training and support for families and foster carers. There is general agreement on the importance of stability for children in out-of-home care. There is a lot of evidence that children who grow up in stable, loving families achieve better psychological outcomes than children who grow up experiencing multiple moves through different foster families and/or repeated attempts to return to their family of origin.

Relative and kinship care is currently the most prevalent care arrangement in New South Wales for indigenous children and young people. As at 30 June 2000, 72.5 per cent of Aboriginal children in care were placed with family or kin. It is important that proper attention is paid to the child's sense of identity and that his or her key relationships and values are supported.

I understand that the Hon. Ian Cohen, the Opposition and the Government intend to move amendments to the legislation. I believe that those amendments will go a long way towards alleviating the problems surrounding this very important issue. The Women's Legal Resources Centre, an organisation assisting more than 10,000 women and children in New South Wales each year, supports the Opposition's proposed amendments to include relative care in the definition of "out-of-home care". The centre states that this will address the real need of the 51 per cent of all children in formal kinship care and those placed with relatives by way of a Children's Court order or designated agency placement. The centre recognises that the needs of these children and their carers have been left unaddressed for too long and that they receive less support financially, have little contact with professionals, and are isolated from appropriate services.

The Community Services Commission adds its voice in support of these amendments, saying that outright exclusion may effectively remove any level of review or intervention leading both child and carer and the placement arrangement without adequate support or a safety net in case of failure. If resources are

problematic—and I am led to believe that that may be the case—the Act must be sufficiently resourced in all its aspects. It is as simple as that. Out-of-home care cannot be excluded simply because of finances. This aspect must be appropriately resourced if the spirit of the Act is to be effectively applied. Patrick Parkinson, Professor of Law at the University of Sydney, agrees. He has said:

> Leaving [children in kinship care] without any formal process of support or review is in my view, unacceptable.

The number of children in care has doubled in the last eight years. Currently there are 3,424 children and young people in "other family/kinship" care. They cannot be ignored. The Government may indeed make the necessary amendments, but this is by no means guaranteed. The Association of Children's Welfare Agencies, the peak children's welfare agency, acknowledges that it is possible that the Government's concerns about a lack of resources to support and supervise the number of children in kinship care may override considerations as to the best method of protecting the interests of children and young people in vulnerable circumstances. Should this happen, it would be nothing less than a travesty of justice. Support, services and supervision must be provided for all children and young people under the care of the Minister or the director-general. No-one should be excluded.

The Secretariat National Aboriginal Islander Child Care has more than 20 years experience in the history and application of child welfare policy. It states quite firmly that the permanent or indefinite placement of Aboriginal or Torres Strait Islander children with families other than Aboriginal families constitutes a serious risk to the cultural identity of indigenous children. Such actions place at risk the right of Aboriginal or Torres Strait Islander children to grow up in a community with other members of their group, to enjoy their own culture, to profess and practise their own religion, and to use their own language.

For many years the Government has been promising to look at the definition of out-of-home care. So far, it has done nothing. Amendments are now before us that will do just what the Government has been promising to do for three years. Children who have had some dreadful experiences of abuse and neglect may have significant needs in the aftermath of their removal from their parents. Being cared for by an aunt, uncle or grandparents may provide an excellent environment, as does foster care. Either way, it is a major transition for a child. At the moment there are serious concerns about the adequacy of the processes being used to select placements with relatives, and there is little follow up or support. For those important reasons I support the bill. I will support various amendments that will be moved in Committee.

Ms LEE RHIANNON [3.40 p.m.]: I support the comments of my colleague the Hon. Ian Cohen when he outlined the Greens' support for the Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill. The Greens have concerns about some of the technical aspects of the bill and we will move amendments to address those problems. Yesterday members on the crossbenches had an opportunity to hear from Professor Patrick Parkinson, a former chair of the community welfare legislation review group that reviewed the 1987 care and protection Act. It was informative to hear him speak. He spoke to us in particular about the status of young people in kinship care, which is dealt with in this bill.

When Professor Parkinson spoke to us yesterday he said that it was never intended that these children be left out of the groupings covered by this bill. Today a number of speakers in debate on this bill said that this is an issue of real concern. The Government has to take responsibility for these children. Clearly, the Government has a duty of care and it must act on it. That is part of its job as a government. I know that it is hesitant to take action in this area because of the issue of resources. The money is there and it can be found. It is essential that relatives caring for young people are given support and that their care is monitored. Those are the two components that we must address when we talk about kinship care. This support is necessary because the aunties, uncles and grandparents who are caring for young relatives are often in need of considerable assistance.

We are talking about a large number of young people when we are considering this issue of kinship care. Forty per cent of all children in care are placed with relatives. A large number of those children are Aboriginal. As at 30 June last year, 36 per cent of children and young people in kinship care were Aboriginal people. The Government should be able to see its way open to support those relatives. The other reason that the Government must be proactive in this regard relates to its duty of care to young people to ensure that they are not abused in any way. As we know, young people are most likely to be abused by people whom they know, so we therefore are talking about relatives. It is tragic, but time and again studies have shown that people who are abused—in particular young people—know their abuser.

The wellbeing of young people in kinship care is paramount. That can happen only if those who are giving that care are carefully and closely monitored. The Greens believe that the bill must be amended as it

relates to kinship care. We are looking forward to being able to establish how the Government intends to handle that issue. The Community Services Commission, which held an inquiry into substitute care, noted that kinship care should have been included in the definition section of the Children and Young Persons (Care and Protection) Act 1998. Similar issues have been considered and raised by the Association of Childrens Welfare Agencies.

On various occasions the Government undertook to canvas and discuss this most important aspect. It has gone some way towards doing that, but it is important that the matter is spelt out in the bill. A number of members have referred to this matter in their contributions. The main issue that I wanted to cover—and it is an issue that impacts on a great many honourable members—is that of kinship care. I usually refrain from using the term "people with children", but I know that issues such as this are very important to people with children. I hope that the Government will take action in this regard. At the moment there is a need for greater support. Clearly, this issue must be monitored so that more tragedies do not occur.

Reverend the Hon. FRED NILE [3.45 p.m.]: The Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill (No 2) seeks to amend the Children and Young Persons (Care and Protection) Act 1998 with respect to the long-term welfare of children and young persons who are placed in out-of-home care and for other purposes. The bill includes a number of amendments that spell out how the Government plans to achieve its objectives. Some of those amendments, which are open to interpretation, might cause some concern in the community. We are dealing with the most important aspect of our society, that is, the family unit, the rights and responsibilities of parents and the rights and responsibilities of children.

The Christian Democratic Party has always had the family at the centre of its policies. That is why it will introduce the Family Impact Commission Bill, which is still to proceed through both Houses of Parliament, but which I hope will be adopted by both Houses in due course. In our view, the family is a God-given, basic and natural unit of society. It is not something that is dreamed up or identified by governments; it is something that comes from the Creator. Under the law in our State, children are the responsibility of parents until they are aged 16. When we hear of some of the problems in society we often think that that responsibility should be borne by parents until their children reach 18 or even 21 years of age. Some of the children who run away and who are caught up in prostitution or drugs are 14 and 15 years of age.

Parents have often come to see me about the wellbeing, health and safety of their teenage children who have run away. It has become clear to them that the Department of Community Services and/or the police are aware of the location of their children, but they will not co-operate with parents and tell them where their children are. Social workers and members of the police force will sometimes say, "If a child is 15 years of age there is no point in becoming involved as that child will soon turn 16." So the age of consent is lowered further because of the way in which police and social workers enforce the law and carry out their responsibilities. We now have a second print of this bill, which went through a tortuous process in the other place.

All honourable members want to ensure that the rights of parents are upheld. In a family that is performing adequately and in which a child is being given love and care, the State should intervene only reluctantly. Honourable members would be aware that some social workers are zealous and heavy-handed. I refer to that sensational case in which a large number of children were taken away from a commune in the northern suburbs of Sydney. The name of the group was always a bit vague, but I think originally it was called the Children of God. It is now using the name Family of Love. It was thought in that case that children were in some way being abused.

I understand that as a result of a drawn-out court case the parents of the children concerned were found to be doing the right thing and may even have been awarded compensation. That was embarrassing for the department and reminds us as parliamentarians that when we pass legislation that deals with the care of children who are not clothed and fed properly, and who perhaps have drug-addicted parents, we have to take into account that not all families are like that. The Government should always be reluctant to intervene in a family unit. Other honourable members have referred to the sensitivity of Aboriginal families if legislation is enacted that gives the State the right to remove their children and perhaps to put their children into a non-Aboriginal family or a white family. They are concerned that their Aboriginal culture would not be perpetuated.

Honourable members are aware that in the past Aboriginal children were raised in white families, and in some instances were given the same love and attention as would be given to white children. A case can be argued that an Aboriginal child should, wherever possible, be allowed to remain within the Aboriginal culture. The Minister is aware of those concerns and on 14 November wrote to members of the Legislative Council and said:

> On 24 October the Government agreed to defer further debate on the *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill No 2* for 2 weeks, to allow further consultations …
>
> We were very aware that there was concern within the Aboriginal community about the Permanency Planning Bill due to the history of the removal of Aboriginal children.
>
> In acknowledgement of these concerns assurances have been given that the Government is committed to the Aboriginal Placement Principle; reiterated that the Bill does not provide for compulsory adoptions, whilst noting that it was expected that adoptions would very rarely occur for ATSI children for cultural reasons.

The Government has included certain safeguards in the legislation. I know that people often say that Aboriginal groups get greater benefits or more attention than non-Aboriginal groups. It could be argued that the same conditions that are provided in these amendments for Aboriginal groups should also be provided to white people or Chinese, Vietnamese or Cambodian people from non-English speaking backgrounds. I am not criticising the protection of Aboriginal children, but if it is necessary for them to have those protections, similar protections should be available to other cultural groups. The white community is the mainstream cultural group in our society, but we also have other ethnic communities.

The Government has spent a lot of time on this legislation, and stress has been placed on the Minister and her staff to meet the concerns of Aboriginal groups. I received submissions from the Aboriginal Child, Family and Community Care State Secretariat requesting certain provisions, only to be told by them later that what they had asked for perhaps could be misunderstood. Originally the Government accepted the wording they requested but then had to reconsider the Aboriginal child placement principle to ensure that there was no inadvertent watering down of that principle. That request has been met in this bill. There has been an exhaustive and comprehensive consultation process on the bill. At this point we need to be concerned that amendments, whether moved by the Opposition or members of the crossbench, do not alter the balance of the carefully worked out wording of the bill that deals with this sensitive area. It may not always be clear to some people who proposed the amendments in good faith.

We are also concerned about extending this bill further, as particularly proposed by the amendment from the Opposition. I have received some strong letters about this matter. On 15 November Linda Mallett, the Children's Guardian, New South Wales Office of the Children's Guardian, wrote an important letter to the Minister. She said:

> I am writing regarding the amendments … proposed by the Liberal Party in the Legislative Council on 14 November 2001.
>
> The amendments are contrary to one of the main principles to be applied in the administration of the Act, detailed in Section 9 (e). This is the principle of the least intrusive intervention in the [life] of a child or young person and his or her family that is consistent with the paramount concern to protect the child or young person from harm and promote the child's or young person's development.
>
> The inclusion of children and young persons placed in relative care by a designated agency will bring a degree of intervention in the lives of families where there may be no child protection concerns. Under Section 150 (4) designated agencies will be required to conduct reviews of these placements in accordance with guidelines I have prepared and forward them to my Office for examination under section 181 (1) (d). A full review by a designated agency requires a high degree of casework intervention and co-ordination and associated administrative work.
>
> The current resources of the Office of the Children's Guardian would need to be increased to meet the demands of the expanded definition of out-of-home care. The focus of the work would shift from those children and young people who are most vulnerable. The proposed amendment is not consistent with the original purpose of the Office of the Children's Guardian.

That letter influenced the view of the Christian Democratic Party on whether it should support the amendment proposed with good intentions by the Opposition. The long-term effects of the amendments were perhaps not taken into account by the Opposition. We want to maintain the principle of having the least, not the maximum, amount of intervention in family units. The main purpose of the legislation is that it will address the dilemma of how the Government will respond to children affected by drug-addicted parents. A caring Government cannot ignore those circumstances and has to respond. One would hope that all parents are fit to care for their children but, sadly, in a modern society that is not always the case. I will monitor the application of this legislation, particularly in relation to the retention of the rights of the parents and the child that was not required up until this point. Item [3] of schedule 1 to the bill makes this amendment:

> **Section 9 What principles are to be applied in the administration of this Act?**
>
> Insert "In particular, the safety, welfare and well-being of a child or young person who has been removed from his or her parents are paramount over the rights of the parents." At the end of Section 9 (a).

There should always be some qualification of those principles stemming from our desire to still want to balance the rights of the child and the rights of parents—and not to tilt the scale, as the amendment seems to do, strongly away from the rights of the parent. However, I note that item [4] of schedule 1 inserts new paragraphs (f) and (g) in section 9. They seem to be two new principles balancing the principle I have just quoted. New paragraph (f) states:

> If a child or young person is placed in out-of-home care, arrangements should be made, in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child or young person's circumstances and that, the younger the age of the child, the greater the need for early decisions to be made in relation to a permanent placement.

New paragraph (g), which is most important, provides:

> If a child or young person is placed in out-of-home care, the child or young person is entitled to a safe, nurturing, stable and secure environment. Unless it is contrary to his or her best interests, and taking into account the wishes of the child or young person,...

And this is the part I wish to emphasise:

> this will include the 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.

I hope that will be emphasised in instructions to be given to social workers and those involved with the Department of Community Services who will implement this legislation. I hope they will bear in mind the provisions I have just quoted. I have received a copy of a statement from Barnardos, which also has expressed a strong concern about the amendments proposed by the Opposition. This is a copy of a letter addressed to the Minister. In part it states:

> I am writing to you to express Barnardos concerns about the proposed amendment to include Kinship Care in the definition of "out-of-home care" in the new Children's Act, thus to include a doubling of the number of children who will require formal monitoring by officers of your Department or licensed agencies. This is because in the changed environment of the new Act, monitoring and supervision and the report of this via Care Plans and Reviews to the Children's Guardian are mandatory for children defined as "out-of-home care".
>
> We do not believe that the public of New South Wales would advocate the mandatory monitoring and supervision of grandparents or sister who, out of family feeling and attachment, undertake the rearing of their abused grandchild, niece or nephew.
>
> We understand that the amendment is written as if this is simply a matter of technically including children previously included. The current approximate 8000 children counted in the out-of-home care statistics are all placed from child protection concerns or court order. The amendment would have the effect of continuing this definition, but there are significant implications.

The letter goes on to give other reasons for Barnardos' deep concern about that amendment, and it concludes:

> We hope that you reject the current proposed amendment to extend monitoring to these placements. We further suggest that this position be reviewed when the Act itself is reviewed in a few years time.

It is signed by Louise Voigt, the Barnardos Chief Executive Officer and Director of Welfare. For those reasons, we share Barnardos' concerns. With those remarks, the Christian Democratic Party gives its in-principle support to this legislation. Obviously we will closely monitor its application. Let me make it clear that if parents feel there is some unjustified heavy-handed action, that will be brought to the attention of the Minister.

The Hon. ALAN CORBETT [4.05 p.m.]: This bill is vastly different from the draft exposure that the Minister presented in the other place last year. It is also a great improvement. Just as the bill I presented earlier this year was improved by the degree of community consultation and critical scrutiny it received before and after its redrafting, this bill has benefited from intense scrutiny after consultation. The major recipients of the improvement will be the children of this State who are the most vulnerable—those in out-of-home care. At no stage did I doubt the sincerity of the Minister in her objectives when she proposed the earlier draft, however that draft was not one I could have supported. I can support this bill.

The bill is required because it is a sad fact that some parents can never provide for their own children a secure, safe and nurturing home. There is no doubt that children best grow to their potential when there is some permanency in their life. But they also need safety and nurturing. Until now, some children have been placed into and out of care outside their natural family in a manner resembling some sleight of hand—now you see them, now you don't. The children have no hope of achieving secure bonding to other people, little hope of their physical and mental potential being reached, and a loss of emotional stability in their tumultuous life. They are shunted back and forth between their natural parent or parents and an ever-increasing list of foster carers or homes, in a vain attempt to restore a dysfunctional family.

Some families cannot be restored in a way that answers the needs and rights of the child. But many can. The child welfare system has been built to restore family units, but there has been no mechanism to break up family units in a permanent way when the needs of the child require that to happen. This bill provides that mechanism: if the family unit is so irretrievably wrong for the child's wellbeing, the child can be taken from it and the Children's Court can order a permanency plan that will provide for the child's needs.

This bill allows for a range of options in permanency planning, including restoration to the care of a parent or parents after temporary care outside the home and kinship placement. Although adoption is the most extreme of the permanent plans in that it removes all supervision by the department, "sole parental responsibility" is another option. It still allows the appointed carers access to departmental funding where that would be necessary for the proper care of the child, yet releases the carer and child from continual supervision by the department. This bill also allows for children to retain the right to contact with and knowledge of their natural parents if so desired. For indigenous children, who unfortunately are overrepresented in the current out-of-home care statistics, there are extra safeguards to prevent a re-run of the stolen generation, and close supervision of the annual adoption figures by the department.

The draft bill attempted to permanently cut off parents who were, for example, drug addicts from their children. Such parents may love their children dearly when they are in a normal state but neglect the child severely when they are affected by addiction or some illness. No-one would argue that a child should be returned to the parent time after time to suffer neglect or abuse over and over, but some parents can and do recover from depression and other mental health problems and drug addictions.

This bill allows for a permanency plan to return a child to a parent who can fulfil the needs of the child. Alternatively, the bill can simply allow that parent to at least keep contact with the child if they have been permanently placed with another carer. The child's needs are considered to be paramount over the rights of the parent, yet the parents are not treated in an unduly harsh manner by losing all contact with their child.

In the past, parents who systematically abused or were cruel to their children may have had the children returned to them on numerous occasions, placing the rights of the parent above those of the child. This bill will correct that wrong and give the children the possibility of taking a place in a family unit that offers them safety and love but, thanks to this legislation, is also secure from the disruption of the parent reclaiming the child. It will give the most vulnerable people in our society the chance at a future of happiness rather than one of pain or misery or possibly early death caused by malnourishment or mistreatment.

Various members will move amendments in Committee, and there appears to be quite a lot of controversy surrounding the amendments to be moved by the Opposition. I will wait until the bill is considered in Committee to say something more about that. I will support amendments that will streamline or improve the bill, especially for children—but I say now that I support the intent of this bill. I believe that it will, for the most part, achieve its objectives. I commend the Government for the bill in its redrafted form. I commend the Minister and her staff for the consultations that resulted in the improvements to the legislation.

The Hon. JOHN RYAN [4.09 p.m.]: The Opposition supports the bill. I think the Opposition can quite rightly claim that, due to its efforts, this bill is in a much better position than it would have been had the Minister had her way at the initial stages of its preparation. When the Government first announced that it was considering permanency planning legislation, we had heard terrible stories about children being returned to drug-addicted parents time and again.

The Minister was almost talking about a three-strike limit, as if there were something special about the number "three", at which parents might lose their children and some sort of different arrangements might be made for them. There are no easy rules to be applied to any child. Each instance has to be considered on a case-by-case basis. One good thing this bill brings to the mix is the new standard to be inserted in the Act that the paramount consideration is to be the safety, welfare and wellbeing of the child or young person who is being removed from the parents; and that the wellbeing and safety—particularly the safety—of the child is to be considered more important than the rights of the parents. Being a parent is not a civil right, it is a responsibility. Quite rightly, this bill makes the legal edict that being a parent is going to be a responsibility and, if that duty is not conducted properly, some parents, sadly, will lose, in the better interest of the child.

However, no-one can write three-strike rules, or anything of that nature, to stipulate the appropriate time for a final decision to be made for a permanency plan. For that reason, the bill now provides for permanency plans to be constructed and reviewed by the court before final decisions are made. Those

procedures are outlined in proposed sections 83, 84 and 85A. They appear to be fairly rigorous procedures whereby these ultimate decisions are to be made, but they are sufficiently flexible to allow each individual circumstance to be reviewed and taken into consideration.

There is no guarantee that a blood relative of a child will treat the child correctly. Sadly, that is the case for far too many children. The cost to society of families and blood relatives abusing children is great. The likelihood is that children who are not treated properly, who are mistreated, are likely to be incarcerated—at great expense to society—or will end up being cared for in our mental health institutions. They will fail to achieve the right of every individual: to realise their full potential. To ensure that all children gain this right, it is necessary to establish at the outset that the interests of a child at risk prevail over the interests of blood relatives.

The children involved in these arrangements are frequently developmentally disabled; quite significant numbers of them suffer from disabilities caused by the abuse they received at the hands of their parents. I have the opportunity to see this all the time. My wife works in the child care industry, in a respite care cottage in the Narellan Vale area that is funded by the Department of Community Services. Honourable members would be staggered to know the number of children cared for in that cottage who have profound disabilities as a result of being abused by parents, to the point where they have intellectual disabilities, have lost the capacity to talk or walk or do all sorts of things that most of us would consider to be a vital part of being a human being.

Regrettably, being a blood relative is no guarantee that you will look after a child. The New South Wales figures on child abuse are instructive and sad. Roughly 72,000 reports of child abuse are made every year to the Department of Community Services, and 12 per cent of them, about 9,000, are substantiated after investigation. The thought that nearly 9,000 children have been reported to the Department of Community Services and have been found to be abused or neglected ought to be of great sadness to all of us, as citizens and as members of Parliament. In some 20 per cent of those notifications a carer or a family member has abused or mistreated the child. That is a significant number.

Fortunately—I hope this is the case, that it is not just through lack of resources—56 per cent of the cases reported to the Department of Community Services are assessed as requiring no further action, or the outcome is concluded. I can say from personal experience that that is not always the case. Simply because the Department of Community Services says no further action is required, that does not necessarily mean that no further action is required. Being a person who was reported, I know that one of the reasons departmental officers went away in my case was that, oddly enough, I told them to go away, because my parents wanted me to do that. The case was closed, even though later investigations proved that serious intervention was required into my family so we could sort out some pretty serious problems, and we needed some assistance and care.

People often present a picture to the Department of Community Services that everything is rosy, when frequently that is not the case. I suspect that a substantial number of the 56 per cent of the 72,000 cases reported to the Department of Community Services fall into that category. They have been written off by the Department of Community Services, not because there is no problem but simply because resources are not available to investigate further or, due to circumstances I am not going to explain in detail to the House, the person being abused and the family conspire because they are worried about the outcome of what they see as government interference into their family. Sometimes that government interference, whilst not welcome initially, can result in some magnificent outcomes if it is properly resourced, timely and appropriate.

The problem the Opposition sees with this bill is that although it establishes a good standard for many of the children who come to the notice of the Department of Community Services, regrettably it will miss more than 50 per cent of the children who perhaps should have permanency plans made for them. The excuse given by the Government is that it is concerned about resources. In my opinion, the first cheque any government should write is for the protection of children who are vulnerable. That is what government is for.

As a member of the Liberal Party I totally support the limitations on government interference in society. That is one of the fundamental beliefs of the party I represent. Nevertheless, all members of the Liberal Party would accept that where a child is vulnerable, one of the first duties of a government is to intervene and protect that child. Nobody would quibble with that, no matter how conservative their view of government intervention. The excuse that resources might cause the Government not to intervene where intervention is appropriate, even if it is a mild form of supervision to make sure that everything is all right, is not an appropriate argument. The role of government is to make sure that vulnerable children are protected. If ever government should engage in any sort of corporate activity, that is one of its fundamental roles.

In some respects this bill addresses issues that the Minister has said are necessary, and the Opposition agrees, but the bill and the Government remain silent on multiple reports that have been made on substitute care.

That is unfortunate. One of the most prolific writers on the subject of substitute care has been the Community Services Commission [CSC] with its preparation of the "Forwards, Backwards, Standing Still" report, which was produced in July 2000. Similarly, the CSC produced a report entitled "Voices of Children and Young People in Foster Care". Finally, a report produced by the CSC and released in November 2000 entitled "New Directions from Substitute and Support Care" looked at the whole issue of resources and responses required in this area. The Minister has been silent about the recommendations made by the report. It is of concern to the Opposition and to me that instead of engaging in a co-operative relationship with the CSC, the Government has almost conducted guerrilla warfare against the commission and its head, Mr Fitzgerald.

One might say that it is sad for a Labor government to be constantly at war. I do not regard the Labor Party as having a monopoly on care and concern in the social welfare area, but it has certainly said that this is one of its highest priorities. I am amused that the Labor Government is constantly at war with someone whose specific brief is to ensure the care of children, particularly when substitute care is involved. The Community Services Commission has made a number of recommendations. One recommendation is that families should be given more support, assistance and, most importantly, information. Sometimes all people need is good, clear information as to how to proceed and a modicum of support when such changes, which cannot be made overnight, are made. One cannot simply read a brochure and then implement changes; sometimes support and instruction are necessary.

Honourable members would be surprised at how many families are thirsty for information and appreciate receiving information in an accessible fashion. That is what the Community Services Commission has recommended. The Community Services Commission also said that urgent priority should be given to build the capacity of Aboriginal children's services across the State. One would have thought that the Minister, in announcing this legislation, at the same time would have announced a series of proposals that might address the concerns of the Aboriginal community. Clearly, and for historical reasons, the Aboriginal community is concerned about legislation relating to taking children from the care of their parents and placing them in the hands of someone else. The Government has not provided a comprehensive response to the recommendations in the Community Services Commission report that urgent priority be given to building resources to assist Aboriginal children.

Anyone looking at the Aboriginal community will no doubt see that it is a community in severe grief. There has been much discussion in this Parliament and in the media over the past week about what is happening at Waterloo. Members of this Parliament who care to go out and walk around the area known as the Block and see what is happening to children in open daylight, where parents are openly injecting drugs behind corrugated iron, in makeshift injecting rooms, will know that something in the community is perilously wrong. I have seen incomplete houses covered over with plastic tarpaulins to make them sort of liveable. God only knows what it must be like to live underneath plastic in an incomplete house in Redfern.

The Government needs to provide a comprehensive response to those sorts of issues. We have not seen a comprehensive response, although the Community Services Commission, which is a respected organisation, stated that this should be an urgent priority. I am concerned that buses cannot run on the streets around the Block in Waterloo not simply because the police are not there to supervise law and order but also because families in the area are breaking down. We have two choices. We can simply leave the families to cope for themselves, or the Government can get involved and provide those families with appropriate support. Plenty of models are available. The excellent models available—for example, when schools have been used as community centres—should be applied to places like Waterloo. A myriad of other youth services might be provided to lost young people. I am worried that these lost young people will host families of their own—often young people have families before they have developed the necessary maturity to look after those families—and then reproduce the abuse they experienced and pass it on to second, third, fourth and ongoing generations. Those generations will be lost because we fail to meet the urgent priority, which I believe should be the first responsibility of any government.

Finally, the Community Services Commission recommended that there is a need for self-determination and self-management of Aboriginal services. That is true, although my dream for the Aboriginal community is that, in places where it has some level of determination, it will scrutinise those who supervise the agencies with the same level of scrutiny that the wider community places on us. Too frequently the resources of agencies such as the Aboriginal and Torres Strait Islander Commission slip through the cracks—in some instances through corruption—because the level of supervision that should be provided to those agencies is not there, because the Aboriginal community has not yet come to terms with its responsibility of voting for those organisations. It is the Aboriginal community's responsibility to scrutinise these agencies carefully and to make them accountable for their resources, meagre though they may be, to ensure they are being used effectively.

Nevertheless, as a fundamental principle, I agree entirely with the recommendation of the Community Services Commission that the Aboriginal community needs to self-determine and self-manage services specific to that community. All the reports on the substitute care system, to which I have referred, show that the system suffers comprehensively from such things as a lack of knowledge by the Department of Community Services about the number of children in care and where they are. I have had the responsibility of chairing a committee that has reported on the increase in our prison population. I can tell the House that today we have no idea how many State wards have wound up in gaol. Without doubt, there are many State wards in our gaols. Similarly, no comprehensive information is available on how many State wards and children who have been in substitute care are in our juvenile justice institutions.

The information that is available is inadequate. We need the information urgently. If the Government, which is ostensibly the parent of these children, does not know how many of them have turned up in gaol, where are we? An urgent and, one would have thought, fairly easy inquiry to make is how many State wards wind up in our criminal justice system. The figures are likely to be shocking and to spark some level of extra responsibility being taken on by the Government. Additionally, the reports show that there is insufficient training and resourcing of staff in agencies. Only recently I recall speaking on the adjournment about the lack of resources for foster parent training in Campbelltown. Why is there a lack of resources? Because the Government was actually cutting staff in Campbelltown and people were getting children before they were trained to cope with them. The Department of Community Services was cutting foster parent classes.

Foster parents are a rare commodity as it is without signing them up to carry out these responsibilities without appropriate training and support. I and I am sure all honourable members have the utmost admiration for parents and people who take into their family homes other people's children from families in trouble. These people exhibit an admirable and wonderful quality, but it is one that requires training and supervision. All too frequently that training and supervision is not provided, and what then happens the care arrangements break down. Frequently we lose people who are willing to care for other people's children because they are forced to cope with circumstances beyond their control. Children who are presented for foster care are rarely blonde-haired, blue-eyed, well-controlled and easy to manage young people. Frequently they are disturbed and troubled young people who require greater parenting skills that most of us will ever gather together, and they test these people, generous though they are.

Frequently I have noticed that foster carers are not the most wealthy people in our community. Overwhelmingly, their greatest resource is their capacity to love, but often they do not have many of the world's resources. By and large they are not wealthy people; they are simple people, often with simple homes. I guess many of them seek something that I find admirable. Rather than chase the dollar, they chase the betterment of mankind through caring for children. However, because they do not have many of the world's resources they need additional resources. While I accept that the Government has improved the lot of foster parents, it has not been overgenerous.

The Hon. Carmel Tebbutt: It's more than the Coalition managed when it was in Government.

The Hon. JOHN RYAN: I am not attempting to make a partisan political point. I am simply saying that the proper resourcing of foster parents should be a high priority. The Opposition is concerned that implementation of this legislation may streamline the moving of children from foster care to adoptive care. When parents adopt children and have a permanent plan, frequently the Government withdraws resources and leaves the family to cope like any other family. Once an adoption has taken place, there is no going back; one cannot undo what is irrevocably done. Families are left trapped, often with kids with significant and higher support needs. They are unable to update resources with new technology, and are unable to get necessary health care, other than the basic requirements available under Medicare, and so on. Often children in foster care have expensive medication needs, but the State withdraws because an adoption has taken place.

There is a need to review the practice. It is admirable that parents decide that they want these children in their house and that they are prepared to make the same type of commitment to those children as they would to their biological children. That is admirable, but I do not believe that is where the State's responsibility for many of these children should stop. Many of these children are way beyond the capacity of any ordinary family to cope without significant State support. I have had the opportunity of seeing that close at hand because foster parents who are associated with the service in which my wife works turn to adoption and I see the difficulties that they attempt to cope with afterwards as the Government resources simply flee. The last thing that the Opposition wants to see, and I hope the last thing that the Government wants to see, is adoption being used as a means of reducing the State's responsibility by quickly streamlining the transfer of children from high-support substitute care into "see ya later" adoption care. Well-meaning parents sometimes have little idea of the difficulties that will confront them.

One of the other fundamental principles on which this legislation is based—and judging by comments that have been made, this also appears to be a fundamental belief of the Minister—is that frequently a foster or substitute care placement breaks down because of the fault of the family that receives the child. That is not always the case and the Community Services Commission's report states that placements fail because "poor casework practice and/or lack of placement options, rather than the demands and needs of the birth family, were the primary impediments to both timely restoration and good permanency outcomes". If the fault lies in bad case management, this legislation will not change anything. This Parliament will pass good laws but if there are no proper case management plans in existence that are well resourced, the problems will continue. If the fundamental issue of the provision of good case management planning is not addressed, then nothing will be achieved by simply changing the laws of New South Wales: we will simply have a higher benchmark against which to measure our failure.

I ask the Minister to clarify in her reply whether studies have been done to support the needs of people who will be the subject of this bill. Every report that has ever been done on the Department of Community Services has clearly shown that placements break down for a number of reasons, but primarily because of the lack of casework support. That needs to be comprehensively addressed by the Government. As I stated earlier in my opening remarks, this bill is good in its intent but misses the mark quite significantly because less than 50 per cent of the children who are in need of the case management planning underlying this bill will receive it. That view is supported by a large number of very well respected commentators whose research is indisputable and whose wisdom in these matters more often than not proves to be correct. For those reasons the Opposition will move amendments at the Committee stage and challenge the Government to support us. The annual report of the Department of Community Services indicates that of the 8,517 placements in out-of-home care made by the Department of Community Services last year, 3.424 were placements with other family or kinship and 920 placements were with non-related family. The report indicates that 51 per cent of children in substitute care will not be affected by this legislation at all.

Although it may be argued that the proposed amendment by the Opposition is too intrusive, I ask the Government not to dismiss the amendment but rather to explain how this legislation will touch the 51 per cent of kids who are in substitute care. They too are frequently abused. They too are frequently in need of parents who have the additional supervision and support that is required. I am aware that letters have been received and a couple of them were read by Reverend the Hon. Fred Nile I will read some pretty significant material into the record also to demonstrate that there is wide support for the Opposition's amendment. I point out that the category of children to whom I have referred, that is, those who are in out-of-home care with family or other kin, not only is in fact a significant number of the people who come into substitute care but also is a growing number of people in substitute care. In 1998, 35 per cent of children were placed with other family carers or in kinship arrangements. Now, only two years later, the figure has increased to 40.2 per cent, which indicates significant growth, and the rate is increasing.

The conclusion drawn by the Department of Community Services in its annual report is that the increase in substitute care has occurred because of the dramatic rise in the number of recorded kinship care placements. The categories of other family kinship and non-related family—which I understand include non-blood relatives, neighbours and friends of the family—when added together now make up 51 per cent of care placements. The Opposition is not using figures that the department has not published or endorsed. The amendment to be moved by the Opposition at the Committee stage will certainly be based on evidence that is well documented and supported by significant numbers of people whom this Government should respect. Children are placed in kinship relationships, and about 75 per cent of indigenous families also find themselves in that situation. That means that this House is designing a bill that is almost not going to touch the indigenous community at all. In the indigenous community, 75 per cent of placements are with other members of the family and they are certainly placements that require some level of support by the provision of training, supervision and resourcing, as distinct from interference, which is what this bill is about. The department should treat people providing kinship care as foster parents even though they may be related to the child by blood or some association in the family. Frequently those families are carrying out tasks that are exactly the same as the tasks carried out by a substitute parent in a substitute care placement arrangement.

The Opposition has been fortunate to receive, though not through the Government, a fairly thick document, which I present to the House. I am not in a position to read great quantities of its contents to the House, but I can say that it is an internal working document of the Department of Community Services. The document shows the consultative process engaged in with a large number of Aboriginal agencies about the issue that the Opposition will address at the Committee stage. The overwhelming conclusion of the consultation team—whose report the Government has not placed before the House—is that the vast majority of Aboriginal

agencies support an extension of this bill's provisions to kinship care arrangements that operate in the indigenous community. I understand why some members of the indigenous community might be concerned but, believe it or not, when they were asked by the consultative team their response was that people in some type of relationship with the child preferred to have a level of involvement. This is a report that the Government will not tell anybody about. It makes clear that there is inadequate support for foster parents and kinship parents. The document states:

> The issue of foster care and support for foster parents varied across the three different locations. However another common thread that emerged from all three location was that there was "no training or support for foster carers to be able to cope" with the children and their needs under their care. ...
>
> Others raised the issue that many of them were informally fostering children unbeknownst to the department and yet were doing the same job as those foster parents who formally had children placed with them by DoCS - yet they were receiving support payments to ensure the child had sufficient clothing and food. At the same time, much of this informal foster care, was going unrecognised or unacknowledged by the department, unless "something went wrong".

The point I make is that the department has a report that makes it clear that the types of things I have been trying to explain to the House do exist. The issues I have discussed are well known to the public and are well known to the Government. They are also well documented, yet the Government is challenging the Opposition's contention that the Government should extend the provisions of this bill to cover kinship care arrangements. The Government obviously has a report that it refuses to acknowledge or distribute and which indicates that some level of extension is required. If the Government cannot do better than adopt the approach suggested by the Opposition, I challenge the Minister to say what else it might do. There is no doubt that the Government knows that kinship arrangements are a problem and is refusing to acknowledge that problem.

The problem is particularly acute for the Aboriginal community because the overwhelming conclusion of the report, which is based on specific advice from the Aboriginal community, was that that community realises that informal kinship care arrangements require further intervention from the department. I am not referring to the type of intervention that one usually associates with the Department of Community Services, such as taking children away, but simple support such as the provision of permanency plans, training for foster parents and the provision of a modicum of supervision and advice. That does not necessarily have to have all the hallmarks of intervention that one normally associates with oversight by the Department of Community Services. The Opposition is not talking about that type of intervention.

Some people have sought to suggest that that is what we are on about. We are not. We are on about the positive aspects that are important for any group of parents, but particularly those who are coping with children who are not theirs and who in many cases have been damaged by past experiences. In many cases such parents do not have the personal or financial resources to carry out the task that they have let themselves in for because they can see no other way out for the particular child. To demonstrate that there is wide support for the Opposition's proposal, Robert Fitzgerald, the Commissioner of the Community Services Commission, said in a letter addressed to Mr Hazzard, the shadow Minister for Community Services:

> In both these reports the Commission concluded that certain categories of relative care (including in the case of Aboriginal children and young people, kinship care) should be explicitly included in the definition of out-of-home care.

For starters, the Opposition's proposal has the endorsement of the Community Services Commission. In a letter also addressed to the Opposition, Professor Patrick Parkinson said:

> The arguments for having some recognition of placements with relatives in the definition of out-of-home care are compelling. In this Permanency Planning Bill, the Minister has sought to emphasise again that the wellbeing of children is paramount—not resource constraints, not parents' interests and not other factors. If resources are the issue —and they are—then the Government needs to address them. In the scheme of things, and with less frequent reviews then for other placements, we are not talking about a great deal of money to help care for some of the most needy children in our society.

Our proposal is also endorsed by Professor Patrick Parkinson, who might be said to be one of the fundamental advisers to the bill. The Association of Children's Welfare Agencies, a much-respected organisation, has also endorsed the Opposition's proposal. It says:

> It is possible that concerns by the Government about a lack of resources to support and supervise the number of children in kinship care may over-ride considerations as to what is best to protect the interests of children and young people in these vulnerable circumstances.

The Secretariat National Aboriginal Islander Child Care says:

> SNAICC considers that the appropriate course of action would be for the NSW Government to proceed with legislation which brings kinship care placements within the definition of out of home care. Subsequently and of equal importance it must ensure that the responsible departments and designated agencies are properly resourced to support families and children involved in kinship care.

The Aboriginal Child, Family and Community Care State Secretariat made the following recommendation to the Minister:

> In relation to Aboriginal children placed in Kinship Care, that this care be recognised as Out of Home Care to enable the support of Aboriginal Families and the continuation of Aboriginal culture.

The Women's Legal Resources Centre said:

> This inclusion addresses the real need of the 51% of all children in formal kinship care, those placed with relatives by way of a Children's Court order or designated agency placement…
>
> Rather than intrusive, a regular review of the circumstances of children placed in out of home care with relatives, is an appropriate minimal standard that meets the objects of the Children and Young Persons Care and Protection Act 1998.

I could refer to further endorsements of support, but I will not. I believe that represents a fairly comprehensive group of people who indicate some support for the proposal advanced by the Opposition. During the course of negotiating on this bill the shadow Minister for Community Services, Mr Hazzard, discussed this with the Minister's staff. If people believe that legislation of this nature is not needed, one small aspect of assistance would be to ascertain the number of people who are involved in establishing a computer service to show the number of people involved in substitute care and where they are located. We are told that the department will finally get around to establishing such a computer resource, which has been trumped up at almost every estimates committee in which I have ever asked questions on this matter. We have been told that there is a computer "coming", that it is scheduled for December 2003. It seems that every promise the Government makes will be delivered some time after the next election. It is time to hold the Government accountable on this vital issue. We ought to have at least that minor issue dealt with well before December 2003.

The Opposition supports the bill, but we strongly call on the Government to improve it by supporting the amendments that the Opposition proposes to move in Committee. We believe that those amendments will improve the bill substantially. Even though the Minister will not acknowledge it, the Opposition has played an important role in improving the bill, and we now wish to improve it even further. If the Government does not support the Opposition's amendments, I challenge the Minister to suggest in some detail how we should proceed to address the needs of the more than 51 per cent of children in this State who are in out-of-home care and the 75 per cent of Aborigines who will be in what could be described as out-of-home care. One might say that the bill is a whitewash if it does not address the needs of those people. With those reservations, the Opposition supports the bill as a step in the right direction.

The Hon. Dr PETER WONG [4.45 p.m.]: Unity will support the Government's Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill. I congratulate the Minister on bringing the bill forward, and on its consultations and delayed introduction so as to amend the original draft. As other members have said, this is an extremely sensitive issue that is of concern to the general community. That is not simply because the media tends to latch onto cases of child abuse and neglect. This is an issue where good policy suffers if we respond too quickly to media pressure or become preoccupied with party politics. I am very grateful for the briefings that have been provided by the Minister's office, and for the information provided by concerned groups such as the Association of Children's Welfare Agencies, the Aboriginal Secretariat and Professor Patrick Parkinson.

There is broad agreement on the main features of the bill, which amends the 1998 Act by requiring planning of suitable long-term placement for children and young people where there are difficulties with their being returned to their birth parents. The bill contains several important amendments that will mainly affect children in out-of-home care. It should reduce drawn-out court proceedings. Whilst the bill allows for adoption, it recognises that adoption is only one option, which is a significant improvement on the original draft. Most importantly, the bill addresses many of the concerns that Aboriginal communities had with the original draft. Whilst not all Aboriginal groups support the bill, I believe it goes a long way towards addressing the issues that have been raised. We are all aware of the pain and suffering of the Aboriginal stolen generation and the need to avoid a recurrence of systemically removing Aboriginal children from their families.

The bill commits the Government to the Aboriginal placement principle, confirms that compulsory adoptions will not take place, and requires ministerial consent for an adoption order for an Aboriginal child with a non-Aboriginal carer. I am sympathetic to a number of amendments that I believe will be put forward by the Opposition and the crossbenchers. In particular, I will give careful consideration to amendments to extend the definition of "out-of-home care" in relation to formal kinship care. I am aware that the Minister has given an undertaking to make such an extension at a future date. However, it concerns me that the Government gave a similar commitment two years ago. Perhaps the time has now come to address this issue, while it is before Parliament. If the Government is concerned about the resources required, it is imperative that it makes the necessary resources available.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [4.48 p.m.]: I wish to touch on some philosophical underpinnings before I go on to deal with the nitty-gritty of the bill. One starts with the position of a child, and one then looks at the processes that impinge on that child at a social level. In my personal journey of discovery I started in surgery, where one looks at a person's condition, discovers what the condition is caused by, for example, tobacco, and then looks at why tobacco is so ubiquitous in society. You look at advertising, marketing, economics, social customs, and whether the Government is willing to influence those issues. Of course, those factors filter down into the problem that confronts you. So you begin to look from the particular towards the general, which is the process of induction. I went from the very precise area of surgery, where data and research on the best operation procedures are treated as a science, to an area that has more effect but where data is far more vague and where far less effort is made to achieve precision in the way things work.

Anecdotes often lead to policy. Honourable members often refer in this House to stories that suggest that certain legislation is necessary. In the case of child protection there are always contrary anecdotes, for example, "This child was adopted and did well or did badly, and this child was left with his parents and did well or did badly." It is difficult to prioritise any anecdote based on those sorts of issues. I have often said in this House that I believe more science and prospective studies are needed. For example, we establish how many kids are in a particular situation, we follow them for 20 years, we determine the outcomes of the individual cases, we draw some conclusion and then systematically collect the data. We do that in a framework within which an individual's privacy is considered, and that knowledge base is then used for the social good.

In the realms of surgery and the statistical methods that are used to modify ongoing regimes for, say, the treatment of leukemia, the data from each individual is systematically collected and we then determine the best way of treating the disease. Those types of mechanisms must be considered. Computers have made possible the management of such data. The London School of Economics has economic models from which it takes certain economic indicators. It then speculates on the mathematical relationships to predict the inflation or unemployment rate. Tony Vinson used a number of social indices to determine the number of people likely to go into prison. I believe that those indices were never treated as scientifically as they were treated in the economic discipline, but there is scope for that to happen.

As legislators we must set the constraints and parameters that will impinge on those for whom we are legislating. I refer again to a health example. It has been found that the health indices that are most simply collected—infant mortality and life expectancy—improve with increasing wealth, up to about $US5,000, if we compare countries. Above that, improvements in infant mortality relate more to the evenness of the distribution of wealth in an economy than to the absolute or mean level of income. So again, economics do not just depend on the wealth of a country, they also depend on how a country manages its wealth. In relation to infant mortality, things such as an adequate supply of food, vaccinations and clean water are important.

Theoretically, these standards and services are available in Australia, but the big imponderable in the equation is the impact of illegal drugs. While social disadvantage has always led to more social disadvantage, with some sort of perpetuation of the situation, the drug addiction problem and the marketing of drugs have added a new dimension. I refer now to kinship, an issue that is dealt with in this bill. Some children are placed with their grandparents on the assumption that grandma will be okay even if mum is not. However, we must remember that grandma is the mother of the mum who has the drug problem. So we cannot really assume that simply going back a generation or placing the child with another relative will solve the problem.

We often debate in this Chamber the cost of education in Australia and the allocation of resources in the community. In Taiwan a great deal of money is spent on education, not on the basis that education is terrific—although I think that is the belief in that country—but on the basis that a country cannot afford ignorance. If we think that education is expensive, we should turn our minds to ignorance. If someone remains relatively ignorant, he or she cannot compete in the world, and if ignorant people cannot compete in the world, they have to survive on welfare or charity or by dint of a life of crime. So, effectively, education is empowerment. Society would be a better place if more people were able to make good decisions for themselves.

Ask that question of any business manager and he or she would say, "The lower down good decisions are made, the fewer problems a corporation will have." But we do not look at society in that way. If we can empower individuals at the bottom to make good decisions about their lives and about their children's lives, we will have a far better society. We give no consideration to such issues yet we allow gambling. We say, "It is okay. Advertise gambling. Let people misspend their resources. It does not matter. Someone else will get rich. It is a capital transfer." When such resources are applied incorrectly at an individual level, it becomes difficult and most expensive to resolve the problems that are being faced by families affected by gambling. What is required is a prudent application of resources in the beginning.

In a sense, the Australian Democrat's philosophy is the philosophy of empowerment. It should not be an argument between welfare and non-welfare. We require a conscious policy to empower society from the bottom and to value relationships between people. That is the glue that holds society together. If we want to get economic about this debate, we should cost the value of relationships between people and determine what policies will increase or lessen the bonds between them. Yesterday, a woman said to me, "I am a single mother. I made a bad life choice. My husband is a complete lemon. Now that I am on my own, I am not sure what to do. I have a charming little two-year-old daughter, but I am lonely." That woman is living in the northern beaches area where there are lots of people. The notion of loneliness in a crowd is interesting. We must address these issues if we are to keep society together.

Children are hard-wired in the first three years of their lives. When I was a student I attended a lecture on the syndrome of the psychologically and vulnerable child. At that lecture a psychologist said that he had seen a number of children who had had horrendous lives but who had turned out quite well as adults. The key feature that he identified was that those children had had a relatively happy and stable time in the first 12 months of their lives. After that, they had had horrendous experiences but their problems were able to be fixed.

My three-year-old child has quite strong opinions of what should and should not happen. He has a view about the way in which the world should be ordered. It is critical that we resolve the problems that are impinging on our children. What has happened recently? Why has there been an increase in the demand for services by the Department of Community Services? Domestic violence is no longer a major problem; drugs are a major problem. Let us look at the big picture. The fact that most drugs are criminalised reduces the ability of people to ask for help. More money is needed by those who are affected by drugs as they have to buy them at inflated prices and they obtain that money through theft, prostitution, or whatever. It is more difficult for those people to access the health system, and resources are needed to keep the prisons and the insurance industry operating. Less money is therefore available for the services that are provided by the Department of Community Services and more demands are being placed on the time of that department.

The criminality of drugs must be addressed as part of the overall issue. People believe that the simplest way to cure drug addicts is to make drugs illegal. When I asked the Government to make the sale of tobacco illegal as many people are dying of diseases caused by tobacco I was told, "It is too difficult. It is impossible as it would be a massive infringement of civil liberties." On the one hand we have a simplistic answer and, on the other hand, we are not willing to do the simplest things to make illegal the sale of tobacco products. It costs this State $60,000 a year for every prisoner in gaol. However, one of the best long day centres in Sydney charges around $12,500 a year for each child, or about $50 a day. We must address that issue if we want good resource distribution and investment in the critical years of a child's life. Primary schoolteachers have told me that the resources spent on kids relate more to their shoe size than to any other definition of need. There is a lot to be said in that regard.

I am not an expert on western philosophy, but it has been said that we as Anglo Saxons perhaps believe in the superiority of Greek thought, the stress on the primacy of the individual—a concept that has never quite been accepted to the same extent in eastern philosophy. In a sense that has led to the support of an individual achieving his or her maximum potential even if sometimes that is achieved to the detriment of others and the development of the nuclear family as a concentration on the individual. Yet in Sweden, which is very much a western society, there is a concentration on the individual as the extended family has declined and the State has taken over many functions of the family, including child support among other services. If the single carer, or the mother particularly, is not a good role model and cannot look after the child, the State, which has a good child care system, picks up that responsibility to a large extent. I realise that is as much a Federal issue as it is a State issue but it needs to be addressed.

I agree that it takes a village to raise a child. That is the raising of a child becomes the responsibility of the entire environment surrounding the child—all the adults around that child. The concept of the nuclear family

gives a lie to that adage in that a child may identify with one adult and become almost a stranger to the rest of the community. The question is: What is the best way to fix kids, if the individual-focussed view is that the child needs to be fixed or looked after? The options are to support the family or the primary care giver or find an alternative in foster care, kinship, out-of-home care or whatever. The question of the mother's rights is important but the primacy of children's rights has been recognised by everybody. What is the best way to achieve that? There has been a swing between adoption and family support. That is a philosophical decision and there is a swing from one extreme to another. A review of adoption records shows that in the immediate postwar period young women were assumed to have not been able to look after their children simply because the women were young and had fallen pregnant. They were not given any welfare to assist them to look after their children, and the children were removed with significant adverse effects on both the mothers and the children. A committee of this House conducted an extremely emotional inquiry into adoption.

In time considerable stress was placed on a mother's ability to support children. Consequently, there was a swing away from adoption. It was felt that it was manifestly wrong to take children away merely because their mothers were young and unemployed or were, to use modern parlance, off their faces on drugs. At the same time as the swing occurred problems with regard to illegal drugs increased. That may be the reason the difficulty has compounded at the moment. The extreme view of some people interviewed during the adoption inquiry was that adoption was a crime. The black children of the stolen generation are very frightened of the misguided policies of adoption that this bill in a sense facilitates. How do we balance everything? Essentially, there has to be an assessment on a case-by-case basis. I have spoken about the more general, social and economic matters but further down is the poor assessments made by the Department of Community Services [DOCs] with regard to individuals.

Staff at DOCs have told me that they have poor morale, high staff turnover, difficulty with training and huge caseloads. They have said that assessments that are put before the courts are not good. They do not have a research base for decisions, which are usually reached after reading a file. The workers are green. They are optimistic, however, because they hope that everything will turn out. The material given to the court for decision-making in terms of reasonable likelihood of restoration is not good. If the court does not have good material, it is difficult to make good decisions. There is no transparent reasoning in many DOCs cases and that may be partly the reason that decisions are often made for short periods in the hope that better information will be available later. One good aspect of the bill is the provision that clinics associated with the courts have the potential to give an assessment independent from that given by DOCs. Certainly children will not benefit if, with no better data, the courts are encouraged to make decisions for the long term rather than the short term.

Obviously if the court returns a child to an unsatisfactory situation more in hope than in expectation, that time might be considered long in terms of the child's life even though it is short in terms of the court's concept of time. But we believe there should be transparent reasoning to ensure an excellent process so that decisions can be relied upon and to ensure that if decisions must be made for the longer term, they should based on sound data. It is all very well for this Parliament to pass legislation with good intentions. We must remember that the administration and delivery of those intentions is very much in the hands of the Ministers and available resources. The lack of response by the Government to the last three reports of the Child Death Review Committee is discouraging. The Government must think seriously about the provision of free day care services and regular help. DOCs workers should not be regarded as interferers, police or monitors but as facilitators of practical help.

It is worth noting that the United Kingdom has a child protection register, and in the case of a referral a multi-agency meeting is conducted. A child can be put on the register and receive priority for child placement in a child care centre. If we cannot have universal free child care throughout New South Wales—and that may be prohibitively expensive; although I do not necessarily accept that that is so—it may be worthwhile providing long-day care for the first few years of a child's life at a centre that is resourced sufficiently to ensure that the child is well fed and has some adult role models to care for the child. If those role models are not family members, so be it. Parents may be able to function better by having a break from their children. There is no doubt that a child who cries or screams or who is constantly demanding becomes very wearing on a parent. As a parent I can vouch for that—even with a model child.

It was found in the United Kingdom that child care workers were a very valuable and reliable source of material when decisions had to be made about a child and where the child would be best placed. The care workers often had a very good understanding of the child and his or her social situation. This bill is a step in the right direction but it must be made clear that the issue is about providing the necessary resources of DOCs, and about providing adequate information to courts so that they can make the right decisions for longer-term

placements. I have drafted some amendments with that in mind. They were drawn up as a result of consultations with and input from the Association of Child Welfare Agencies but people from the courts and DOCs. I ask: When will the Act be reviewed? I understand that assent to the principal legislation was given on 14 December 1998 and that there was to be a five-year review. Obviously things have changed considerably since then but we believe a review is needed at some time. I will also speak to other amendments in Committee, after which I hope we will have a bill that will do something about providing better placement opportunities for children than has been the case to date.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [5.09 p.m.], in reply: I thank all honourable members who spoke in the quite lengthy debate on the bill, and especially those who have taken an active interest in the important provisions of the bill. There is no doubt that children's care and protection raise complex and difficult issues. We heard some thoughtful contributions from honourable members during this debate. I think all members would agree that the contribution of the Hon. John Tingle was quite moving. He evoked emotions that often arise in respect of neglected and abused children.

The Government is pleased that the Opposition does not intend to oppose this legislation. I note that the Hon. Patricia Forsythe said in her long and comprehensive speech that we now have good legislation that the House is able to approve, and that this is a step forward in the interests of young people of New South Wales. I want to reiterate that the Minister said at the outset of this process that she wished to actively promote debate on child protection casework issues. I think that has occurred. There has been extensive community consultation. That consultation, despite the many views expressed, confirmed broad agreement on the principle of permanency planning for abused and neglected children.

I do not intend to address now all of the matters raised by honourable members in their contributions; many will be dealt with in Committee. However, I want to make some comments about the Opposition's amendment relating to kinship care. The Government's position is that, while kinship care is an important and topical issue, there needs to be a separate process of community consultation to deal with any proposed kinship care amendments. It is not appropriate to move complex amendments in the context of this bill without fully consulting with the community on the potentially far-reaching implications of the amendments.

This issue it is too serious to be the subject of cheap political point scoring, but I must take issue with some comments made by Opposition members that resourcing should not be an issue in this debate. Their comments were rather hollow when considered in the light of the record of the Coalition in this area when it was in government. No-one could argue that child protection should be anything other than an absolute priority for all governments. However, the Carr Labor Government has backed up its commitment with some real increases in resources—in fact, a 145 per cent increase in the child and family services budget since 1994-95. That is a significant increase.

There are many challenges in this complex and difficult area. I do not think anyone denies that. But the Government is meeting those challenges. For example, we now spend $165.5 million per year on out-of-home care services. That is an additional $65.7 million per year since Labor came to government. Had we not had to put so many resources into redressing the effects of policies pursued by the Coalition Government—policies such as the closure of local offices, the slashing of jobs, and the removal of specialist child protection counsellors—we may be even further advanced than we are at this stage. Nonetheless, I do not want to spend a lot of time on the politics surrounding the issue. I just think that comments that resources are not relevant need to be put in the context of the actions of the Coalition when it was in government.

It must be recognised that there is no clear consensus in the community on the need for kinship care reforms. The community has a range of divergent views about such reforms, which have the potential to require very intrusive government intervention in the lives of many people, even where there is no evidence of abuse or neglect. The Government is prepared to promote this discussion. We recognise that it is a discussion that needs to take place and is prepared to consider potential amendments—but only after a comprehensive community consultation process. I find it extraordinary that the Opposition, after criticising the Minister for conducting only an 18-month consultation process on the bill, at the eleventh hour apparently seeks to ambush the community with amendments to one of the most complex aspects of the Act without any community consultation at all.

A number of Opposition members challenged the Government to say what it would do. The Government is prepared to commit to a formal community consultation process, commencing by 10 December and concluding in March. This process will include a discussion paper. We can include the Opposition

amendment in that paper. It will include also area visits and a satellite link-up. Other honourable members have foreshadowed their intention to move amendments. They will be dealt with in Committee. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Schedule 1

The Hon. IAN COHEN [5.16 p.m.]: I move Greens amendment No. 1:

No. 1 Page 4, schedule 1 [5], lines 19-28. Omit all words on those lines.

We are advised that legal practitioners have significant concerns about the meaning and effect of new section 70A, which deals with interim orders. These can be made at a number of different stages of proceedings—for example, in a situation where the ground for care has been established, an interim order is necessary pending the final determination of the case. There could be no question of making an order dismissing the proceedings when the court is not yet in position to make a final order. The new section then requires more legal argument on the meaning of the requirements of the section in relation to the decision whether to make an interim order.

What would be the position in relation to a rescission application that is successful? In such a case there are no proceedings to dismiss, but an interim order may be necessary pending a decision about the order that would replace the rescinded order. The proposed section may achieve nothing more than extend the range of issues on which lawyers have to make submissions and which require adjudication, thereby adding to the costs of the legal proceedings and the time taken to make decisions. Given that there are clear provisions governing adjournments and other principles in the Act that bear upon the issue of how and when orders should be made, this section should be deleted from the bill. I commend the amendment to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [5.17 p.m.]: The Government does not support the amendment. The amendment, as the honourable member outlined, proposes deletion of new section 70A. The intent of the new section is to direct the court to always consider the long-term consequences of all its orders, even interim orders, before those orders are made. It requires the court to assess whether the order is in the interests of the child or the young person and to balance weather an interim order is preferable to finally disposing of the matter at that time.

A further consequence will be to direct Department of Community Services [DOCS] practice. If DOCS knows that the court will make a decision, that increases the onus on DOCS to make sure that its material is before the court, or risk the making of an order that DOCS does not consider satisfactory. The deletion is proposed because it has been said that this change will unduly interfere with judicial discretion in case management and may increase legal argument. The answer to this rationale is that the change directs the discretion, it does not remove it. The change sets out what the court needs to consider in exercising its discretion. If the change leads to increased legal argument, then any extended argument at this stage is preferable to undue delay in resolving the matter as a whole.

The Hon. PATRICIA FORSYTHE [5.19 p.m.]: The Opposition will support the amendment. The Opposition has listened to the argument raised by the Hon. Ian Cohen and believes at this time that there is some uncertainty about the nature of interim care orders. Therefore, we are prepared to support the Greens on this amendment.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 19

Mr Breen	Mr Gay	Mr Samios
Dr Chesterfield-Evans	Mr Harwin	Mrs Sham-Ho
Mr Cohen	Mr R. S. L. Jones	Dr Wong
Mr Colless	Mr Lynn	
Mrs Forsythe	Mr Pearce	*Tellers,*
Mr Gallacher	Dr Pezzutti	Mr Jobling
Miss Gardiner	Ms Rhiannon	Mr Moppett

Noes, 19

Dr Burgmann	Mr Hatzistergos	Mr Tingle
Ms Burnswoods	Mr M. I. Jones	Mr Tsang
Mr Corbett	Mr Macdonald	Mr West
Mr Costa	Reverend Nile	
Mr Della Bosca	Mr Oldfield	*Tellers,*
Mr Dyer	Ms Saffin	Ms Fazio
Mr Egan	Ms Tebbutt	Mr Primrose

Pair

Mr Ryan Mr Obeid

The CHAIRMAN: Order! There being 19 ayes and 19 noes, I cast my vote with the noes. The question is resolved in the negative.

Amendment negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.27 p.m.], by leave: I move Australian Democrats amendments Nos 1, 2 and 4 in globo:

No. 1 Page 5, schedule 1 [7], lines 16 to 20. Omit all words on those lines. Insert instead "arrangements".

No. 2 Pages 9 and 10, schedule 1 [13], line 30 on page 9 to line 3 on page 10. Omit all words on those lines. Insert instead:

(2A) Before granting leave to vary or rescind the care order, the Children's Court must take the following matters into consideration:

(a) the nature of the application, and

(b) the age of the child or young person, and

(c) the length of time for which the child or young person has been in the care of the present carer, and

(d) the plans for the child, and

(e) whether the applicant has an arguable case.

No. 4 Page 11, schedule 1 [17], lines 4 to 16. Omit all words on those lines. Insert instead:

(1) An authorised carer who, for a continuous period of not less than 2 years, has had the care of a child or young person, for whom the Minister (either alone or with another person or persons) has parental responsibility, may apply to the Children's Court for an order awarding sole parental responsibility for the child or young person to the authorised carer, subject to this section.

These are relatively minor amendments that simplify the provisions. Amendment No. 1 incorporates a footnote into the existing provision. Amendment No. 2 adds a new paragraph (d)—"the plans for the child". That means that if a difficult placement has been arranged it will not be derailed because it does not have the benefit of a long-term placement. So, it cannot be immediately rescinded because it does not have ongoing status. I understand that the court does not want to lose a placement because of an early protest, as it were. Amendment No. 4 also makes a clarification. The amendments have the support of the Association of Child Welfare Agencies and I commend them to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [5.28 p.m.]: The Government supports the

Australian Democrats amendments. The intent of the words being deleted by amendment No. 1 was to bring together in one spot what a case worker needed to consider when undertaking long-term planning. It was suggested that this repetition, while helpful for practitioners who are not trained in statutory interpretation in the same way as lawyers, could have unintended consequences. To avoid this, The Government will agree to delete those words. The Government supports amendment No. 2, which provides an additional note within the provision. The Government also supports amendment No. 4, as the omission of those words does not alter the intent of the original provision.

Amendments agreed to.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [5.29 p.m.]: I move Government amendment No. 1:

No. 1 Pages 5 and 6, schedule 1 [7], line 23 on page 5 to line 20 on page 6. Omit all words on those lines. Insert instead:

(3) A permanency plan for an Aboriginal or Torres Strait Islander child or young person must address how the plan has complied with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in section 13.

(4) If a permanency plan indicates an intention to provide permanent placement through a sole parental responsibility order or adoption of an Aboriginal or Torres Strait Islander child or young person with a non-Aboriginal or non-Torres Strait Islander person or persons, such an order should be made only:

(a) if no suitable permanent placement can be found with an Aboriginal or Torres Strait Islander person or persons in accordance with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in section 13, and

(b) in consultation with the child or young person, where appropriate, and

(c) in consultation with a local, community-based and relevant Aboriginal or Torres Strait Islander organisation and the local Aboriginal or Torres Strait Islander community, and

(d) if the child or young person is able to be placed with a culturally appropriate family, and

(e) with the approval of the Minister for Community Services and the Minister for Aboriginal Affairs.

On 24 October the Government agreed to defer further debate on the Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill (No 2) for two weeks to allow for further consultation. As a result of additional consultation undertaken with representatives from Aboriginal organisations during this period, this amendment has been formulated. The original wording for an amendment to section 78A was provided by the Aboriginal Child, Family and Community Care State secretariat.

The intent was to reinforce the Aboriginal placement principle and to ensure that Aboriginal children had the opportunity to maintain their Aboriginal identity and culture. During the consultation period the State secretariat received further advice that its original amendment to section 78A could have the unintended consequence of watering down the application of the Aboriginal placement principle. The State secretariat therefore supplied a new form of wording to amend section 78A, which does not alter the intent of the original section, and which the Government is prepared to adopt.

The Hon. PATRICIA FORSYTHE [5.31 p.m.]: The Opposition does not oppose this amendment, which overcomes some of the problems highlighted when the bill was debated in the lower House, particularly the lack of consultation with the Aboriginal community. As the Minister has just made clear, there was a process of consultation with the Aboriginal community and a form of words was developed. I draw attention to that fact because in her reply to the second reading debate the Minister referred to the need for further consultation on the Opposition's amendments.

The Opposition's amendments have been available for discussion since the bill was debated in the other place, and a process of consultation with a number of groups has taken place on behalf of the Opposition. I would have thought that if the Government believes it is appropriate to move an amendment to overcome problems that emerged with the initial legislation, and which it believes satisfies Aboriginal community groups, it should also believe that the Opposition's amendments are appropriate.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.32 p.m.]: I move that the amendment be amended as follows:

Omit "a sole parental responsibility order" from proposed subsection (4) and insert instead "an order for sole parental responsibility".

The amendment simply makes a minor change to the wording of subsection (4) to make it consistent with the phrase "an order for sole parental responsibility", which is used throughout the legislation. I trust the Government will accept this minor semantic amendment.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [5.33 p.m.]: The Government accepts the amendment to our amendment.

The Hon. IAN COHEN [5.33 p.m.]: The Greens are pleased to support the amendment of the amendment. I missed the opportunity earlier to say that the Greens support the Government's amendment.

Amendment of amendment agreed to.

Amendment as amended agreed to.

The Hon. IAN COHEN [5.34 p.m.]: I move Greens amendment No. 2:

No. 2 Page 8, schedule 1 [10], lines 1-3. Omit all words on those lines. Insert instead:

(b) that prior to approving a permanency plan involving restoration there is a realistic possibility of restoration having regard to:

Section 83 deals with the preparation of a permanency plan. Section 83 (7) (b) refers to a restoration order, but there is no such thing in the Act. However, there is a reference in the bill to "approval of a permanency plan involving restoration". Amendment No. 2 simply ensures that the terminology used in the bill is consistent. I commend the amendment to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [5.35 p.m.]: The Government supports this amendment, which clarifies and improves the wording of the section. It supports the concept that long-term planning can result in children or young persons being returned to their birth parents.

Amendment agreed to.

The Hon. PATRICIA FORSYTHE [5.35 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 10, schedule 1. Insert after line 31:

[17] Section 135 What is "out-of-home care"?

Omit section 135 (1) (b). Insert instead:

(b) by a person, other than a parent of the child or young person, and

[18] Section 135 (2)

Insert after section 135 (2) (a):

(a1) any care provided by a relative of a child or young person unless:

(i) the Minister has parental responsibility for the child or young person by virtue of an order of the Children's Court, or

(ii) the child or young person is in the care of the Director-General, or

No. 2 Page 12, schedule 1. Insert after line 34:

[18] Section 150 Review of placements effected by order of Children's Court

Omit "A review" from section 150 (2). Insert instead "Except as provided by subsection (3A), a review".

[19] Section 150 (3A)

Insert after section 150 (3):

(3A) In the case of a child or young person who has been placed in the care of a relative, reviews are to be conducted at intervals prescribed by or in accordance with the regulations.

This is very much about the inclusion of "kinship control" in the definition of "out-of-home care". The Opposition contends that this legislation, which it has strongly supported, will be significantly improved by adding the revised definition of "out-of-home care" as proposed in these amendments; that is, to include in "out-of-home care" children who are often in what is called "kinship care". The amendment to section 135 and the definition of "out-of-home care" was originally put forward by the Department of Community Services as part of a draft issues paper. Indeed, the department proposed that the definition of "out-of-home care" be amended to recognise all placement arrangements that are presently recognised under the Act.

Much has been made in the debate of the fact that the statistics on children placed in out-of-home care are compelling; they show that kinship care needs to be included in the definition of "out-of-home care". To do otherwise is to take a very narrow interpretation of "out-of-home care". In this instance we are talking about formal out-of-home care. We are talking about the placement of children in a place other than their usual home and with a person other than their parent. Of course, it does not include the daily care and control of children provided by a person in that person's capacity as a licensed provider of children's services.

Statistics on this were given earlier, and I shall remind honourable members of figures in the Department of Community Services 2000 annual report. As at 30 June 2000 there were 8,517 children in out-of-home care, 3,424 of whom were with other family in "kinship" care and 920 of whom were in "non-related family" care. Together with the categories of "other family", "kinship" and "non-related family", they made up 51 per cent of all placements. The next largest group was children in foster care, with 31 per cent. The whole basis of this legislation is to do what is in the best interests of the children. In a debate about the placement of children and long-term planning for care, it seems extraordinary that we are effectively excluding up to 51 per cent of children in care from the benefits of this legislation.

This is good legislation, and all children who have been placed in formal out-of-home care should be brought under it. One of the amendments will insert a definition in new section 135 (2) to ensure that any care provided by a relative of a child or young person, unless the Minister has parental responsibility for the child or young person by virtue of an order of the Children's Court, or the child or young person is in the care of the director-general, will be recognised by this legislation.

I will now address the nature of consultation engaged in by the Opposition and the support that the Opposition has obtained for this amendment. I note that my colleague the Hon. John Ryan earlier cited a letter from the Association of Childrens Welfare Agencies in which the organisation's chief executive officer stated:

> Should the Government fail to address this issue we urge the Opposition to move the necessary amendments. In so doing, the support, services and supervision will be mandated for all children and young people under the parental responsibility of the Minister or in the Director General's care.

That advice is part of the basis for the amendments compiled by the Opposition. The Opposition proposed the amendments while being well aware that the Government was made aware of the views of a number of key agencies which on other occasions the Government would be pleased to cite as indications of support for legislation. In that context I mention the Association of Childrens Welfare Agencies. As I will show shortly, many other organisations have indicated support for this amendment.

When discussing formal care arrangements and formal out-of-home care or kinship care, the significance of my use of the term "formal" is to highlight the fact that the Opposition is not directing its amendments to informal arrangements, that is, arrangements that are made within families in circumstances of a family crisis in which a grandparent, an aunt, an uncle or an older sibling may be called upon to provide care, often as a short-term arrangement but sometimes in the longer term. Those types of arrangements rarely, if ever, involve the Department of Community Services. They are not the arrangements to which the Opposition is directing its amendments.

The Opposition is referring to children who have already been defined in the Department of Community Services statistics and in its annual report. These children are already recognised as a significant group. Many people think of children who are living out of home as living with foster care families. It is clear from the statistics that many children are in that situation, but the statistics show equally that many children are placed with members of extended families through the Department of Community Services as a result of court orders. Sometimes that occurs because the children are abused in their family situation, and sometimes it is because families cannot cope.

Honourable members need to be well aware that many of the children who are placed in out-of-home situations are placed there because of difficulties caused by the behaviour of the children or because of

difficulties in managing them. Placement is sometimes the direct result of the children's behaviour, and not, as I said in the second reading debate, because they have bad parents. It is sometimes the case that children have very complex needs, and it may be deemed that a grandparent or someone else can provide the right type of support.

The background material provided by the Government included material from Dr Judy Cashmore that outlined various approaches that could be adopted. Dr Cashmore pointed out that relative carers tend to be single and poor and are often older than non-relative carers. Dr Cashmore cites a statistic from Terling-Watt 2001 that indicates that 48 per cent of arrangements for children who are placed in the permanent care of relatives break down by the end of the first year. This is the group that the Government would have us believe should not be the subject of a review process or of this legislation. I repeat: up to 48 per cent of children placed in the care of relatives, who have been referred to as sometimes older, sometimes poorer and sometimes single are regarded by this Government as inappropriate to be provided for in this legislation. Quite frankly, I do not understand the Government's logic; that proposition makes no sense at all.

Earlier in this debate statistics were cited, but I reiterate that the subject of the Opposition's amendments are the 50 per cent of children who are placed in out-of-home care. Of those, as at 30 June 36 per cent were Aboriginal. The Opposition took significant care in consulting with a variety of Aboriginal groups on their concerns about the legislation. We are aware that various groups have made a variety of responses to the Government's proposals. I wish to place on the record some of the views expressed by those organisations, but first let us be clear that these amendments relate to a significant group of young people who, by court orders, are formally placed in the care of families.

The Opposition's amendments do not deal with informal arrangements. I have been fascinated, absolutely fascinated, by the extent of the arguments that have been advanced as to why it would be inappropriate to include those children in the definition of out-of-home care. Acknowledging that there are arguments for and against this legislation, in the context of those arguments my attention has been drawn particularly to a letter I received today from Barnardos. Most honourable members would know that Louise Voigt, the Chief Executive Officer and Director of Welfare of Barnardos, is a person for whom I developed a very high regard when I was the shadow Minister for Community Services. I believe that she is very wise about child welfare issues. I was interested in the point of view she expressed in her letter, which states:

> We are currently concerned that the sudden proposed amendment by the Liberal Party will delay or block Permanency Planning.

There should not be a reason to delay or block anything—that will be in the Government's hands—but the notion of "the sudden proposed amendment" is intriguing. Two weeks ago when this legislation was debated, the amendments were foreshadowed and the concept of the amendments was widely discussed in an issues paper circulated by the Department of Community Services. Moreover, the concept has been widely discussed in reports of the Community Services Commission and it has been the subject of a variety of reports, as the Hon. John Ryan demonstrated during his contribution to the second reading debate.

I have to say, therefore, that I find a little amusing the suggestion that the amendment suddenly dropped out of the sky. On the contrary, it is the result of considerable discussion and consultation, and that only increases my amusement with the Government's suggestion that what is needed now is another period of consultation.

Honourable members should bear in mind that this legislation was first discussed by the Minister for Community Services at the beginning of 2000 and was initially introduced into the Parliament in June last year. Thereafter the legislation went through a whole process of review and consultation. But even before that, during the debate on the 1998 Act, the role and place of kinship care and out-of-home care was the subject of debate and discussion. The suggestion that the Government will commence a process in December and will provide the Parliament with a report in February is very hollow rhetoric. The Barnardos letter states:

> Most Australian people admire the family feeling shown by these ordinary Australians.

The letter is referring to people who support children in need in a family situation. The letter goes on to state:

> Barnardos strongly believes in the principles of the Children's Act, which espouses minimum intervention in the lives of families, a principle that is strongly supported by the community and which will be considerably compromised by this amendment.
>
> Inclusion of kin carers in the definition will involve a high degree of intervention in the lives of these families with care plans and decisions in their lives resting with designated agencies, the major designated agency being the Department of Community Services.

Whilst the Act may espouse minimum intervention in the lives of children, it does not espouse no intervention in the lives of children. That is the choice that members of this House have tonight. Either we ensure the inclusion of kinship care in the definition of "out-of-home care" or, as proposed in the Opposition's amendment, we determine by regulation the intervals at which reviews will be conducted. The Opposition does not suggest we should prescribe by legislation. We simply say that the Government should, by regulation, determine the time at which reviews will take place. That will be done upon the same premise as prescribed in the Act for children who are in formal out-of-home care where they have been placed in foster care arrangements. It will be determined by issues such as the age of the child and the length of time the child is in care.

The Opposition simply seeks to extend the principles espoused by the Government in its legislation. We do so because we believe that the best interests of children who are placed in formal family care arrangements cannot be ignored. I am not referring to the informal arrangement that may be made by a family but to formal placement of a child with a family member. That is the basis of the legislation. The Opposition is not being prescriptive; the matter will be in the hands of the Government by regulation. However, I emphasise that the Opposition rejects the notion put forward by Barnardos. It pushes the bounds of credibility to believe that families would not want to be involved if they were not to be subject to some form of review. I do not want to beat about the bush on this. The fact is that, sadly, however we want to dress it up, child abuse is often intergenerational. Children will be known to DOCS. I suspect that if members of the department who are in the Chamber are thinking about the matter—and I recall that past Ministers have told me this—within New South Wales a certain group of families have been known to the Department of Community Services for years and years.

One would hope that over time families may learn from some of their experiences. One would also assume that in many circumstances the court would not place children with some family members. However, the reality is that that will occur within extended families. The notion that there should not be a review, that DOCS simply cuts the ties and is not formally involved, however minimal that may be, flies in the face of all the evidence. I wish to reinforce the point that in moving this amendment the Opposition has taken wise counsel. In particular, Professor Patrick Parkinson, who was acknowledged in this House in 1998 as the architect of the Children and Young Persons (Care and Protection) Act 1998 and who conducted the three-year review, has said to us:

> I understand the serious resource issues raised in the letter of the Children's Guardian. However, I note that the Government itself advanced proposals to include kinship care in an issues paper released at the end of 2000. The main resource issues are in terms of the frequency of reviews. The amendment to s. 150 leaves this as a matter for regulations, and it would be expected that placements with relatives would occur much less frequently than other reviews. For example, one might have a review after six months, one after two years and then, if everything seems fine, no further reviews. The Guardian could also authorise a less intensive form of review for placements with relatives if this is driven by resource constraints.
>
> The arguments for having some recognition of placements with relatives in the definition of out-of-home care are compelling. In this Permanency Planning Bill, the Minister has sought to emphasise again that the wellbeing of children is paramount—not resource constraints, not parents' interests and not other factors. If resources are the issue —and they are—then the Government needs to address them. In the scheme of things, and with less frequent reviews than for other placements, we are not talking about a great deal of money to help care for some of the most needy children in our society.

Having accepted all the principles of the legislation that this House passed not half an hour ago during the second reading stage, it is logical that children in kinship care be included within the definition of "out-of-home care".

The Hon. Richard Jones: If we really care about children.

The Hon. PATRICIA FORSYTHE: We said that the overriding principle of the legislation is the best interests of the child. That is the overriding issue in the Opposition's amendments. Earlier my colleague the Hon. John Ryan quoted the Secretariat National Aboriginal Islander Child Care organisation, which supports the Opposition's proposal. Its support is significant, because so many of the children who are in kinship care are Aborigines and it is essential that we be mindful of their needs. The Aboriginal Child, Family and Community Care State Secretariat made the following recommendation to the Minister:

> In relation to Aboriginal children placed in Kinship Care, that this care be recognised as Out of Home Care to enable the support of Aboriginal Families and the continuation of Aboriginal culture.
>
> This support would consist of both financial and supervisory support from Aboriginal agencies.

That must also be recognised as part of the process. The Opposition was pleased to receive advice from numerous organisations, including the Women's Legal Resources Centre, which said:

> Rather than intrusive, a regular review of the circumstances of children placed in out of home care with relatives, is an appropriate minimal standard that meets the objects of the Children and Young Persons Care and Protection Act 1998.

That sums it up well. The Opposition's proposal is certainly within the principles of the original legislation, and Patrick Parkinson has confirmed that. It certainly accords with the issues raised in the issues paper of the Department of Community Services. Our proposal has the strong support of Robert Fitzgerald of the Community Services Commission. Indeed, I was fascinated by the Government perhaps trying to be a little even-handed. Some of the material it provided to the shadow Minister included what the Government called a summary of key points of view in the sector. I have quoted some of the comments of Dr Judy Cashmore, who I thought gave a very fair and balanced account that clearly pointed to kinship care being included as part of out-of-home care. The Opposition has also received submissions from the Aboriginal Child, Family and Community Care State Secretariat and Barnardos. Barnados provides a further point of view, suggesting that including kinship placements in out-of-home care appears to be outside the spirit of the Act, which focuses upon enabling, supporting and empowering families. I disagree with Barnardos, because I believe the provision supports families. However, I believe the summary of the three points of view is important. The department has said:

> Most would argue that the provision of financial assistance and support services to children and young people in kinship care should be available. The mechanism for providing this assistance and the level of formality around it is, however, a key point of disagreement in the sector.
>
> It is recommended that a formal consultation process be undertaken.

This Act was extensively debated in the Parliament in 1988. Since that time the Government has had a number of opportunities to engage in consultation. The Government has received advice from a number of groups and, in particular, from the Association of Childrens Welfare Agencies, which acts as an advocate for children. That body said that the definition proposed by the Opposition in this case is the correct definition. I believe that everything the Opposition has suggested logically flows from what is in the best interests of the child. We cannot say, "Of course there will be reviews and we will provide support to foster carers", assign another significant group of children to out-of-home care and then not ensure that there is provision for support. It is in the best interests of the child that there be a process of review. That is the only way in which we will be able to determine whether a child is being well supported and the care is appropriate.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [6.00 p.m.]: The Government opposes the Opposition's amendments. One of the main principles of the Children and Young Persons (Care and Protection) Act is that while the protection and promotion of the safe development of the child is paramount, the least intrusive intervention should be utilised. The Coalition's proposed amendments to section 135 would result in kinship care becoming part of the definition of out-of-home care when this section is proclaimed later next year. The Children's Guardian and other agencies in the out-of-home care sector believe that that will lead to a significant increase in the number of children who will require formal monitoring by officers from the Department of Community Services, other licensed agencies and the Children's Guardian. The Government is saying that, because of the way in which it is currently worded, it could bring about a degree of intervention that may be too intrusive and unnecessary. There is no denying that the Government has had this issue on its agenda.

The Government quite clearly—and I will refer to this issue later in my comments—is prepared to go through a consultation process to ascertain the best way forward in this complex and difficult area of kinship care. The Government is concerned about amendments that have not been given full consideration and that have not been through the full consultation process. The Opposition's proposed amendments to section 135 not only seek to extend the definition of out-of-home care to include any care provided by a relative of a child or young person; they will also broaden the definition of out-of-home care to include two new classifications. The effect of these amendments would be that, where a court has made a limited order, and as a consequence of that order there are no longer any care and protection concerns, the child or young person will remain in out-of-home care—for example, a child whose parents will not consent to a particular medical treatment but in all other respects are loving parents providing a good, nurturing and stable home.

An order is obtained which permits the Minister to give consent to medical treatment. The Minister, pursuant to that order, gives consent, but the order is not vacated until it is clear that no further treatment is required. In the case of some cancer treatments, that could last for some years. The Opposition is stating that, throughout this time, the child is in out-of-home care for all purposes and not just because of the need to monitor and consent to medical treatment. The Government does not believe that is appropriate. The Opposition's proposed amendments to section 135 deal with one of the most complex and sensitive parts of the new care and protection legislation. It is the view of the Government that these amendments must be the subject of thorough consideration through a proper consultation process.

As I have quite clearly said, no-one is denying that the Government has flagged changes in this area. It is certainly not correct to portray the Government as not being prepared to respond in this area. The Government believes that the way forward is through a proper consideration of the issues, and a full consultation process. The amendment moved by the Opposition, if supported, will have a significant impact on Aboriginal families and Aboriginal children's services and there has been no formal consultation. Kinship care is a critical issue for the Aboriginal community. Honourable members would be aware that there has been a vigorous debate on this issue in the Aboriginal community for some time. A number of views have been expressed, but there is certainly no consensus about the best way forward to manage kinship care. I do not believe that cheap shots about who cares the most about children have any place in this debate. It is a complex and difficult issue, and one that must be dealt with in the proper way and with full community consultation. That is what is being proposed by the Government.

The Hon. Patricia Forsythe: I did not make any cheap shots.

The Hon. CARMEL TEBBUTT: I was not referring to the Hon. Patricia Forsythe; I was referring to other honourable members who contributed to debate on this bill. The Government is proposing to have a proper community consultation process on kinship care, commencing in early December and concluding in March. That consultation will be based on an issues paper, supported by area visits and a satellite link up with an expert panel. On behalf of the Minister, I give honourable members an undertaking that the Government will include the Opposition's amendments in the issues paper, as it is not opposed to considering kinship care. But, as I said earlier, it is inappropriate to have this issue jeopardise the current debate about permanency planning. The Government opposes these amendments.

The Hon. IAN COHEN [6.06 p.m.]: The Greens support the Opposition's amendments. What is the history of these amendments? In 1998, as spokesperson for the Opposition, the Hon. Patricia Forsythe made reference to the passing of the original care and protection Act. That was at a time when the Minister and a number of other members were not members of this place. I raised concerns about the fact the kinship care was excluded from the out-of-home care definition. I drafted an amendment to include kinship care in the definition. At that time I was advised that, if the amendment were successful, the whole care and protection bill would be pulled. I was concerned about an issue involving child care and my office took that threat seriously. The Minister can call that a cheap shot if she wishes to do so, but I would be interested to hear her reply.

On 2 December 1998 I was given an undertaking by the then Attorney General, Jeff Shaw, on behalf of the Minister, Faye Lo Po', that the kinship care question would be looked at shortly. At that time the Minister's office indicated that the issues would be considered in the first round of amendments to the Act. The first round of amendments, which were considered by Parliament in October 2000, did not include any consideration of kinship care. I moved amendments to the 2000 bill to include kinship care in the out-of-home care definition. The Opposition did not support the amendments at the time because the Government advised the Opposition that it would deal with that issue shortly. We are now at the end of 2001—three years after the original Act was passed—and kinship care is still not on the horizon. The Opposition, quite rightly, once again is bringing it forward for debate.

Out-of-home care is defined very narrowly to exclude care by any person who is related to a child. The definition of out-of-home care is important because access to services under the Act is restricted to children and their carers who fall within this definition. Kinship placements are treated differently from out-of-home care on the understanding that children in these circumstances usually have better outcomes, and the less intervention by the Department of Community Services, the better. On the whole, that is true. Kinship placements do not require the automatic intervention of the Department of Community Services but may, on occasions, need specific assistance. Some children and young people who are in kinship placements will, unfortunately, face difficulties similar to those faced by other children in out-of-home care.

In particular, there are concerns about children and young people who are currently subject to wardship orders, but who are placed with relatives. Despite this, under the Act, children in kinship care do not have access to the same services and monitoring as children in other types of placements. Those children and young people are disadvantaged by the current definition. The Opposition's amendments will enable children and young people in kinship care, or their carers, to request assistance, including access to counselling and leading care services. The amendments will also ensure that children and young people in kinship care receive appropriate monitoring and review by the Department of Community Services or the Children's Guardian in the way in which children who are placed with non-relatives receive appropriate monitoring and review. With history on our side, the Greens support the Opposition's amendments.

The Hon. RICHARD JONES [6.09 p.m.]: I strongly support Opposition amendments Nos 1 and 2. Amendment No. 1 expands the definition of out-of-home care to include children and young people being looked after by a relative. It applies only to children and young people who have already had government intervention and subsequent placement in kinship care arrangements. Amendment No. 2 requires that in the case of a child or young person who has been placed in the care of a relative, reviews are to be conducted in accordance with the regulations. That is important because the regulations will determine exactly how that will take place. I have received correspondence from various individuals and organisations that have already been referred to. The Association of Child Welfare Agencies supports the Opposition's amendments. The chief executive officer wrote:

> While we remain optimistic that the Government will make the necessary amendments it is by no means assured. It is possible that the concerns by the Government about a lack of resources to support and supervise the number of children in kinship care may override considerations as to what is best to protect the interests of children and young people in these vulnerable circumstances. Should the Government have failed to address this issue we urge the Opposition to move the necessary amendments [which they are doing] … in so doing the support services and supervision will be mandated for all children and young people under parental responsibility of the Minister or in the Director-General's care as it should be.

Patrick Parkinson said in his letter:

> I do not agree with the Children's Guardian that the proposed amendment is contrary to the least intrusive intervention principle in s. 9 (e). If the child has had to be removed from the parents and placed with the Minister or Director-General because of abuse or neglect, then these are, by definition, vulnerable children.

The Community Services Commission, amongst other things, said:

> Whilst the Commission is aware of contrary arguments, we believe that the best interests of the children and young people would be served by their inclusion in the formal scope of the out-of-home care provisions of the Act. Indeed, to exclude those for whom the Minister has parental responsibility or those in the care of the Director General, reduces the coverage and protection available to these children and young people under the existing *Children (Care and Protection) Act 1987*.

The Secretariat National Aboriginal Islander Child Care [SNAICC] also supports the amendments. Muriel Cadd in her letter said:

> SNAICC considers that the appropriate course of action would be for the NSW Government to proceed with legislation which brings kinship care placements within the definition of out of home care. Subsequently and of equal importance it must ensure that the responsible departments and designated agencies are properly resourced to support families and children involved in kinship care.

I suspect that Treasury has leaned on the Minister. I have known Fay Lo Po' for some years now and she is a very caring person. I believe strongly that if these amendments are agreed to she will be secretly very pleased. Together with other crossbench members, I received a call from Carmel Niland this morning and I believe that behind what she said to me she indicated that she wants these amendments passed, even though she said the opposite. I strongly believe that her words were saying to me "I really hope these amendments pass." I hope that they are passed today because it is time to include these other unfortunate children in the system. They need a level of supervision—not as much as in other areas but certainly some—and this legislation will allow that to happen. If these amendments are passed, some of these vulnerable children will be looked after, otherwise they would not necessarily get that same care. It is important that these amendments are passed to assist children in kinship care.

Reverend the Hon. FRED NILE [6.13 p.m.]: I made clear in my contribution to the second reading debate that there has been consultation for two years to get this bill to its current state. That consultation has included many groups, some of which were not consulted about these proposed amendments. We have received letters for and against the amendments but there has been limited feedback from the community. There could even be some anger in the community if the amendments are passed without consultation. I support the promise made by the Minister that there will be a proper community consultation process on kinship care to commence in early December and conclude in March. That process would involve an issues paper on expansion of that activity. It is right that there should be consultation and an issues paper, and the Government has given that undertaking. A number of speakers have said that more resources are needed for the extra care. How many DOCS staff will be involved? Where will they come from? What will it cost in budgetary terms?

The Hon. Richard Jones: Don't children come before dollars?

Reverend the Hon. FRED NILE: The money has to be available. That factor has to be considered before expanding any activity. Extra staff needs to be allocated to carry out the work, otherwise other urgent cases that need DOCS staff would be stretched. Children have been found dead in cars. DOCS has even said following a child's death that it did not have staff or time to follow up signs that the child may have been at risk. All those factors have to be weighed up.

The Hon. Richard Jones: But not with money.

Reverend the Hon. FRED NILE: No, but it has to be done very carefully. The staff requirements and the budget will be presented in the issues paper and the legislation can be amended to include those details in due course. What is the point of two years of consultation to fashion a bill that meets people's concerns and then at the last minute major changes are made to it?

The Hon. Richard Jones: It has been on the drawing board for a long time.

Reverend the Hon. FRED NILE: Consultation has not been on the drawing board. It is not in the legislation. That is the view of the Christian Democratic Party.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.17 p.m.]: I support these amendments, which basically bring relative care into the formal definition of out-of-home care. That care will need to be supervised by the Department of Community Services [DOCS]. That will require extra resources and the Government is concerned about that. It is unsatisfactory that children should be brought under DOCS care when it does not have sufficient resources to check how children are treated. Supervision needs resources. As kinship care involves a large percentage of children being placed with Aboriginal families, the response of Aboriginal groups is critical as they have a history of adoptions from DOCS and a deep fear of DOCS that goes back a long time. Everyone is aware of the stolen generation. It is highly significant that the Secretariat National Aboriginal Islander Child Care spoke strongly in favour of these amendments. The submission from the Aboriginal Child, Family and Community Care State Secretariat of New South Wales and the Australian Capital Territory to Minister Faye Lo Po' in relation to this bill stated:

> Recommendation
>
> In relation to Aboriginal children placed in Kinship Care, that this care be recognised as Out of Home Care to enable the support of Aboriginal Families and the continuation of Aboriginal culture.
>
> This support would consist of both financial and supervisory support from Aboriginal agencies.

They see ongoing resource support of kinship placements as very important. They are looking to this resource support, as was pointed out by the Hon. Patricia Forsythe when she proposed these amendments. It is interesting that the Association of Child Welfare Agencies and Robert Fitzgerald, AM, from the Community Services Commission, have also supported it. The predecessor of Robert Fitzgerald spoke against the Government and unfortunately did not get his contract renewed. Mr Fitzgerald is showing considerable courage by speaking out and credit must be paid to him for that stance. Professor Patrick Parkinson, who has been an absolute stalwart in working out amendments, saying what can be done, and advising on matters, said in his letter in support of kinship care:

> The fact of the matter is that children who have had some dreadful experience of abuse and neglect may have significant needs in the aftermath of their removal from their parents. Being cared for by an aunt and uncle or grandparents may provide an excellent environment, as does foster care. Nevertheless, it can be a big transition for a child. At the moment, there are serious concerns about the adequacy of the processes used to select placements with relatives and there is little follow-up or support. Leaving them without any formal process of support or review is, in my view, unacceptable.
>
> One of the other issues where placements are made with relatives is whether there are any ongoing child protection concerns as a consequence of unregulated contact with the perpetrator of abuse. This may especially be an issue with sexual abuse, where the relative may be unaware that abusive behaviour is continuing. Without any follow-up, these problems may not be detected. At the moment, follow-up *may* occur, but there is no system to ensure that it will.

There could be no clearer exposition of the position than that. Although this issue has been discussed for some time—as was pointed out by Reverend the Hon. Fred Nile—it is very much a case of resources. It is necessary that the resources be provided for this ongoing supervision, which need not be oppressive or frequent if things are going well. There merely needs to be monitoring and auditing of what is going on. If monitoring indicates the need for intervention, that intervention should be scaled up. If there is no need for intervention, clearly the monitoring can be scaled down. It is just a question of creating an obligation that ongoing support continue in kinship cases. This amendment is quite critical and must be supported.

The Hon. ALAN CORBETT [6.21 p.m.]: Obviously, this is a very contentious amendment. I have to admit that at this point in time I am not sure what I will do about it. The first point I make is that the Government is prepared, as the Minister said, to commit to a formal community consultation process, commencing in December and concluding in March. The Minister said that that process will include a discussion paper, that the Opposition amendment will be included in that paper, and that there will be area visits and a satellite link-up. That concession, in itself, must be seen as a good thing.

If there is still argument in the community about whether the legislation is good, surely more consultation is appropriate. On the other hand, as was mentioned by the Hon. Ian Cohen, in the past the Government has given undertakings to review kinship care but that has not happened. It then becomes a question of the credibility of Minister Faye Lo Po' on this issue. It cannot be denied that some children who go into kinship care have been abused and neglected and that they will require some sort of care and follow-up by the Department of Community Services. I should refer to a briefing paper by the Government on a consequence of the amendment being passed. It states:

> … in the changed environment of the new Act, monitoring and supervision and the report of this via Care Plans and Reviews to the Children's Guardian are mandatory for children defined as "out-of-home care".

No-one can argue that children who are being abused and neglected may need some follow-up care. On the other hand, if we pass this amendment, because of the required intervention DOCS will not have the resources necessary to focus on intervention where it is really necessary to have that intervention. This is a very difficult question. I suggest that the Government has two options. The first is to adjourn the debate for further consultation with crossbenchers. The second option is that crossbench members, to play it safe, vote with the Opposition. If the Government does not like the outcome of that, it can always flick the issue back to us when the bill goes before the lower House. It may be wise to err on the side of safety and have further review. It is a difficult question. I guess that is part of being a member of Parliament.

The Hon. PATRICIA FORSYTHE [6.24 p.m.]: I will speak only briefly to remind honourable members, particularly the Hon. Alan Corbett, that on Sunday 2 December it will be three years since the Hon. Jeff Shaw gave this Chamber a commitment of further consultation. Since then some issues have been discussed in particular with the Aboriginal community, but I must say that the Government has had ample opportunity for consultation. Finally, the Hon. Alan Corbett made the point that this really was an issue of resources. He said that there should be intervention where it matters.

We have no evidence, in terms of intervention where it matters, that children placed in kinship care will necessarily have better levels of support from the family than they may get from foster care. It is a responsibility of the department to ensure, by plan, by a review and by monitoring, that the care given is appropriate, wherever the children are placed. Bear in mind that the children we are talking about have been taken out of their homes. That is the starting point for this legislation: it is about the care process where children have been taken out of home. This is about children who have been deemed to be at risk of abuse.

The Hon. RICHARD JONES [6.27 p.m.]: I must point out to Reverend the Hon. Fred Nile—who, I acknowledge, is also a compassionate man—that the New South Wales Government found hundreds of millions of dollars for the Olympics in a very short space of time. This year, fortuitously, the Government has a very large budget surplus. That may not be so next year, but it is certainly so this year. Therefore, the money could be found. If the amendment is passed today—and I hope it will be passed because we cannot leave these children exposed—I am confident that the money will be found very quickly by the Treasurer. It may well be as little as $2 million or $3 million, or perhaps $4 million or $5 million, but I am quite sure it can be found. I repeat, we cannot leave these children exposed.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [6.27 p.m.]: I want to make just a few brief comments. Firstly, I want to dispel the myth that this is somehow a debate about resources. That is a false and misleading statement. That assertion is simply not correct. I have already pointed out the significant resources that this Government has put into child protection. It is false to suggest that we are debating whether there is enough money to make changes in respect of kinship care.

A number of honourable members have raised the point that it has been three years since a commitment was given about making some changes in kinship care. It is not as though in those three years there has not been significant debate and significant changes regarding children and young persons care and protection legislation. As I have already said, this is a complex and difficult issue, and one that engenders significant community debate. The Government has been mindful of that and has given a commitment to a clear process of consultation on kinship care. That is on the record. We have said we will spend the next three months consulting on this issue. That is what we intend to do. Nothing will be lost by proceeding with caution.

As an illustration of the magnitude of the difficulty of dealing with the amendment now, earlier the Opposition indicated that some 3,000 children are in kinship care. Clearly, that is not a correct figure. That underscores the problem of dealing with this sort of issue on the run. The Opposition does not even have the correct figure for the number of children in kinship care. I suggest that the Government's rejection of these amendments is sensible. We have proposed an alternative process, which I commend to the Committee.

The CHAIRMAN: Order! Before putting to the Committee Opposition amendments Nos 1 and 2 in globo I propose to allow the Hon. Ian Cohen to move, and have the Committee consider, Greens amendment No. 4.

The Hon. IAN COHEN [6.29 p.m.]: I move Greens amendment No. 4:

No. 4 Page 10, schedule 1 [14], lines 6-20. Omit all words on those lines. Insert instead:

(3A) If:

(a) an application is made to the Children's Court by a person or persons (other than the Director-General) for the rescission or variation of a care order (other than a contact order) in relation to a child or young person, and

(b) the application seeks to change the parental responsibility for the child or young person, or those aspects of parental responsibility involved in having care responsibility for the child or young person, and

(c) the Director-General is not a party to the proceedings,

the applicant must notify the Director-General and the Children's Guardian of the application, and the Director-General and the Children's Guardian are entitled to be parties to the application.

This will amend section 90 (3A) of the Act, which is useful but requires clarification. The purpose of the amendment is to enable the director-general and the Children's Guardian to be given notice of an entitlement to appear in a rescission of variation application that they have not initiated. This purpose can be fully achieved by the proposed subsection. I commend the amendment to the Committee. It is a simple directive that can resolve a small but significant issue.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [6.30 p.m.]: The Government supports this amendment.

Amendment agreed to.

Question—That Opposition amendments Nos 1 and 2 be agreed to—put.

The Committee divided.

Ayes, 21

Mr Breen	Mr Harwin	Mr Samios
Dr Chesterfield-Evans	Mr M. I. Jones	Mrs Sham-Ho
Mr Cohen	Mr R. S. L. Jones	Dr Wong
Mr Colless	Mr Lynn	
Mr Corbett	Mr Oldfield	
Mrs Forsythe	Mr Pearce	*Tellers,*
Mr Gallacher	Dr Pezzutti	Mr Jobling
Miss Gardiner	Ms Rhiannon	Mr Moppett

Noes, 15

Ms Burnswoods	Mr Macdonald	Mr West
Mr Costa	Reverend Nile	
Mr Della Bosca	Ms Saffin	
Mr Dyer	Ms Tebbutt	*Tellers,*
Mr Egan	Mr Tingle	Ms Fazio
Mr Hatzistergos	Mr Tsang	Mr Primrose

Pairs

Mr Gay	Dr Burgmann
Mr Ryan	Mr Obeid

Question resolved in the affirmative.

Amendments agreed to.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.37 p.m.]: I move Australian Democrats amendment No. 5:

No. 5 Page 11, schedule 1 [17], lines 23B26. Omit all words on those lines. Insert instead:

(5) An application cannot be made without the consent of the parents of the child or young person, if alive.

It is very difficult for courts to award sole parental responsibility. They can only do this with the consent of the parents. In the case of an orphan, the courts cannot get consent because the child's parents are dead. Thus, the child is in limbo because sole parental responsibility cannot be awarded. This has been a controversial issue, because awarding sole parental responsibility against the consent of the parents has resulted in stolen generations and forced adoptions. Nothing in this bill provides that if parents do not consent, the court can award sole parental responsibility.

This is a matter of historical sensitivity, particularly for the Aboriginal community. The Minister's staff advised me that they gave an assurance to the Aboriginal community that no sole parental responsibility orders would be made without the consent of the parents. In the case of orphans that is impossible, and the Government is limited by the promise it has given. The Government would like to support this amendment but finds it is unable to do so because of its promise to the Aboriginal community. The problem is that courts lack jurisdiction to award sole parental responsibility, even when a child's parents have died. This amendment simply deals with a practical problem. It is a commonsense amendment, and I commend it to the Committee.

The Hon. IAN COHEN [6.40 p.m.]: On behalf of the Greens I support the amendment moved by the Hon. Dr Arthur Chesterfield-Evans.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [6.40 p.m.]: The Government opposes this amendment. At present there is an obligation to obtain from the previous holder of parental responsibility a positive consent to the order being made. This arises from consultations with Aboriginal people who are anxious that insufficient effort will be made to locate members of their communities prior to this consent being dispensed with. The Government acknowledges that there is merit in the amendment moved by the Hon. Dr Arthur Chesterfield-Evans. Without the proposed change, the number of applications for orders as to sole parental responsibility might be reduced. Therefore, this will be a matter for detailed consideration as part of the evaluation specifically required for these provisions. There may well be an amendment along similar lines to what is now being proposed by these changes but, if introduced, will not occur without the evaluation and without further public consultation. At present it is not possible for the Government to agree to this change and honour the assurances given to Aboriginal people. For those reasons the Government does not support this amendment.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 5

Mr Breen
Mr Cohen
Ms Rhiannon
Tellers,
Dr Chesterfield-Evans
Mr Oldfield

Noes, 30

Ms Burnswoods	Mr Harwin	Mr Samios
Mr Colless	Mr Hatzistergos	Mrs Sham-Ho
Mr Corbett	Mr M. I. Jones	Ms Tebbutt
Mr Costa	Mr R. S. L. Jones	Mr Tingle
Mr Della Bosca	Mr Lynn	Mr Tsang
Mr Dyer	Mr Macdonald	Mr West
Mr Egan	Mr Moppett	
Ms Fazio	Reverend Nile	
Mrs Forsythe	Mr Pearce	*Tellers,*
Mr Gallacher	Dr Pezzutti	Mr Jobling
Miss Gardiner	Ms Saffin	Mr Primrose

Question resolved in the negative.

Amendment negatived.

The CHAIRMAN: Order! I remind people in the gallery that only elected members of this House may enter upon the floor of the Chamber.

[*The Chairman left the chair at 6.49 p.m. The Committee resumed at 8.30 p.m.*]

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.32 p.m.]: I move Government amendment No. 2:

No. 2 Page 11, schedule 1 [17], line 26. Insert "The Children's Court must be satisfied that the consent has been properly given on an informed basis." after "Minister."

This is an amendment to new section 149. To apply for a sole parental responsibility order, it is necessary to have the consent of those who were the parents prior to removal of the child. The consultations indicated a concern that some parents, particularly Aboriginal parents, may not be in a position to give informed consent. This view derived from case studies of the stolen generations, where there are indications of mothers signing consents without fully realising the implications of their actions.

To address this concern, the Government has moved this amendment to place an onus on the Children's Court to be satisfied that informed consent has been properly given. Further, Minister Lo Po' and Minister Refshauge had previously proposed a number of safeguards concerning sole parental responsibility orders and adoption orders. Following consultation, the Government has agreed to a number of further safeguards.

If there are more than five sole parental responsibility orders within a 12-month period involving Aboriginal children being placed with non-Aboriginal families, a review will be triggered. This is in addition to the previous undertaking for a review if there are five adoption orders placing Aboriginal children with non-Aboriginal families. The Department of Community Services will establish procedures to notify relevant Aboriginal agencies—for example, the Aboriginal Legal Service—of the removal of Aboriginal children so that the agency can have the opportunity of providing support and advocacy for the families affected. The Minister has requested that the Director-General of the Department of Community Services meet with relevant Aboriginal organisations to discuss issues raised during consultations, particularly issues affecting Aboriginal children who have been permanently placed.

Amendment agreed to.

The Hon. IAN COHEN [8.35 p.m.]: I move Greens amendment No. 5:

No. 5 Page 13, schedule 1 [20], lines 8–30. Omit all words on those lines. Insert instead:

[20] Section 265 Review of Act

Omit section 265 (2). Insert instead:

(2) The review is to be undertaken as soon as possible after the period of 4 years from the date of assent to the *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001*.

(2A) The review is to consider, in particular, the effects of the provisions in this Act for permanency planning on Aboriginal and Torres Strait Islander children and young persons.

The Government plans to have two statutory reviews of the legislation, one in accordance with section 265 and another in accordance with proposed section 266. Currently section 265 states:

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

Despite that assent having been given on 14 December 1998, many of the operative sections of the Act were not proclaimed until December 2000. Currently large parts of the Act have still not been proclaimed, including

some of its most important operative revisions. These provisions, which deal with children's services, out-of-home care and compulsory assistance orders, are to be proclaimed next year. If the latest timetable for implementation is adhered to, the last of the provisions of the Act will be proclaimed less than 18 months before the review is to begin.

The review will occur at a time when the measures in this bill will already be in force, so it will necessarily be a review of the Act as amended by this bill. It will therefore be, inter alia, a review of the permanency planning aspects of the Act. On the current timetable, this review will occur after December 2003. Assuming that this bill, if enacted, is proclaimed in December 2001, a further review of the Act, focusing only on the scattered amendments introduced by this bill, will have to be completed by December 2006. Does the Government need two reviews covering the same ground within two years of one another?

Is the Government able to justify the time and expense involved in that when there are so many pressing needs for child protection funding? It is not only government resources that are involved, there is also the time of many practitioners and non-government organisations [NGOs] who participate in such processes by way of submission or otherwise. Furthermore, how will the second review evaluate the effects of these amendments when some provisions of the Act, such as those relating to sole parental responsibility orders, have not yet been proclaimed? There will not be any before and after experiences by which to evaluate the effect of the bill.

I propose that there be one review of the Act. The most sensible course at this point is to amend section 265 to provide that the review of the Act commences four years after the date of the assent to this amending bill. That will be five years after the child protection provisions first commenced in December 2000, but less than four years after the commencement of the out-of-home care and other provisions, which are due next year. This will reflect, in an approximate way, the original intent of the section. I commend Greens amendment No. 5 to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.38 p.m.]: The Government supports this amendment, which stipulates when the changes should be evaluated. A progressive-stage proclamation of the new care legislation commenced in April 2000. The Government does not want too long a period to elapse before the changes are evaluated. This amendment strikes a balance between having an evaluation but not having so many reviews that DOCS is not doing its work because all of its time and efforts are taken up in responding to reviews.

As this is the last amendment, I take this opportunity to thank all honourable members for their contributions to this debate. It has been difficult and complex, but I think everyone has made their best effort to deal with them. In response to the point raised by the Hon. Dr Arthur Chesterfield-Evans about consent requirements in circumstances where the parents are deceased, I inform the Committee that if that proves to be an anomaly, the Government will include an amendment to rectify it in the miscellaneous amendment bill that will be introduced next session.

The Hon. PATRICIA FORSYTHE [8.39 p.m.]: The Opposition supports the amendment moved by the Hon. Ian Cohen because it seems appropriate. I wish to make a few further comments about the legislation. Firstly, my colleague the shadow Minister received extensive briefings on the legislation, particularly from Professor Patrick Parkinson. In putting forward our amendments, we have always done so in the spirit of the legislation. Earlier today the Minister said I had given an incorrect figure. I was mindful of the time just before the dinner break and did not wish to take the matter any further, but I now wish to place on record that the figure of 3,000-plus children in kinship care to which I referred was taken from two sources.

It was referred to in the letter from the Association of Children's Welfare Agencies from which I quoted, wherein the association referred to figures from the 2000 annual report of the Department of Community Services. Almost the identical figure was cited in briefing notes provided to the shadow Minister. The briefing notes quoted a costing conducted in 1992 by Purdon and Associates, which has been recently updated, on the basis of the amount of casework one would need to do, given the number of children in care. The department's advisers may have suggested that I got the figure wrong, but I had two sources: one provided to the Opposition by the Government, and one provided to the Opposition by the Association of Children's Welfare Agencies.

Amendment agreed to.

Schedule as amended agreed to.

Title agreed to.

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

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

In Committee

Clauses 1 to 4 agreed to.

Schedule 1

The Hon. IAN COHEN [8.43 p.m.]: I move Greens amendment No. 1:

No. 1 Page 4, schedule 1, line 6. Insert "water or wastewater infrastructure on" after "to".

The amendment clarifies the scope of section 153B (2), which allows the Minister to grant leases, licences, easements and rights of way over special areas. It will restrict the purposes for which these interests can be granted. It will ensure that only necessary water, infrastructure and activities are permitted in special areas. It is pleasing that the Government has indicated it is prepared to accept the amendment so that these outstanding natural areas are appropriately managed. I commend the amendment to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.44 p.m.]: The Government supports the amendment, which will limit the exercise of functions of relevant agencies to those involved in water or waste water infrastructure on relevant land. The Government is prepared to support the amendment as it clarifies the intention of the bill.

The Hon. JOHN JOBLING [8.44 p.m.]: The Opposition has considered the amendment and concurs with the Government's view that it clarifies the intention of the bill. The granting of leases, licences, easements and rights of way applies to the Sydney catchment, to Sydney Water and to the Hunter Water Corporation, which is important. We believe it is a sensible amendment and we support it.

Amendment agreed to.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.45 p.m.]: I move Australian Democrats amendment No. 1:

No. 1 Page 4, schedule 1. Insert after line 6:

(3) The period of any lease, licence, easement or right of way under subsection (2), including the period of any option to renew, must not exceed 10 years.

The purpose of the amendment is to limit the period of any lease, licence, easement or right of way under subsection (2), including the option to renew, to a maximum of 10 years. It will prevent matters being granted in perpetuity and not reviewed. Although we recognise that water easements will be required for a long time, we are concerned that these matters may continue in perpetuity, so we have simply put a limit of 10 years on them. We feel that this is a reasonable compromise and we hope the amendment will be accepted.

The Hon. IAN COHEN [8.47 p.m.]: The Greens support the amendment as we believe that a 10-year limit is reasonable.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.47 p.m.]: The Government does not support the amendment. As the Hon. Dr Arthur Chesterfield-Evans said, the amendment would set in statute that leases, licences, easements or rights of way may be granted for a maximum of 10 years. The Government is concerned that the amendment will create uncertainty with respect to the future of a central drinking water supply and waste water infrastructure. Both Sydney Water and the Sydney Catchment Authority have statutory commitments in relation to the provision of water and waste water services. Both agencies build infrastructure to last for generations, not just 10 years.

The Government agrees that any leases, licences, easements or rights of way granted by the Minister should not continue unreviewed in perpetuity. The Minister has indicated that he will ensure that an administrative review is undertaken as and when necessary. If that review results in a finding that the interest is no longer necessary for the relevant agency's water and/or waste water functions, consideration will then be given to terminating that interest.

The Hon. JOHN JOBLING [8.48 p.m.]: The Opposition notes the undertaking given by the Minister that leases, licences, easements and rights of way granted by the Minister will not continue unreviewed in perpetuity. We understand the importance of a continuing supply of drinking water and waste water, but the Opposition is unable to support the amendment.

Amendment negatived.

The Hon. RICHARD JONES [8.49 p.m.], by leave: I move my amendments Nos 1, 2 and 4 in globo:

No. 1 Page 4, schedule 1. Insert after line 6:

(3) Subsection (2) does not authorise the granting of a lease, licence, easement or right of way for the purpose of enabling any of the following functions to be exercised in relation to the land concerned:

(a) the impoundment of water on the land,

(b) the permanent inundation of the land,

(c) the construction of flood mitigation structures on the land.

No. 2 Page 4, schedule 1. Insert before line 7:

(4) For the purposes of subsection (3) (b), ***permanent inundation*** includes any flooding additional to the temporary flooding that already occurs due to natural rainfall.

No. 4 Page 4, schedule 1. Insert after line 19:

(7) Subsection (2) does not authorise the granting of a lease or licence in relation to land that is within a wilderness area.

Amendment No. 1 will restrict the granting of an interest under new section 153B to exclude high impacting infrastructure within national parks and other reserves, such as dams, weirs and flood mitigation works. It will also prevent the flooding of a national park caused by a new or raised water storage dam situated outside the national park or reserve. Amendment No. 2 will ensure that "permanent inundation" is defined in a way that includes any flooding additional to the temporary flooding that already occurs due to natural rainfall. The definition of "permanent inundation" is needed to ensure that the section 153B provisions are not used to allow flooding of a national park for an extended, albeit short, period.

During the early 1990s the Coalition Government proposed the raising of the Warragamba Dam, which would have allowed the flooding of areas of the Blue Mountains National Park for periods of up to 30 days. That was promoted as temporary and not permanent flooding, but it would have killed most of the vegetation covered by the temporarily held floodwater. In 1995 the Carr Government prevented Warragamba Dam being raised, because of the unacceptable environmental impact of flooding upstream national parks. By defining "permanent flooding" to include short-term flooding additional to naturally occurring flooding already occurring, if amendment No. 1 were supported a section 153B interest could not be granted for that activity.

Naturally occurring flooding of national parks in special areas, including floods caused by existing dams when they are full, such as Warragamba, Tallowa and Chichester, is not prevented, although the Government has informed us that the section 153B provisions will not be used for that purpose. Amendment No. 4 will ensure that leases or licences cannot be granted in wilderness areas. Section 153A prevents the granting of a lease or licence within a wilderness area under other parts of the National Parks and Wildlife Act. Thus it is appropriate that new section 153B be consistent with that.

If an area is declared wilderness, such as the Kanangra-Boyd wilderness within the Warragamba Dam special area, this amendment will prevent a section 153B lease or licence permitting water and waste water activities or infrastructure from being granted within that area. Recently the Minister for the Environment wrote to environment groups stating that he would extend the Kanangra-Boyd wilderness to the foreshores of Lake Burragorang. It is entirely appropriate that no lease or licence is granted under proposed section 153B within this wilderness area.

The Hon. IAN COHEN [8.52 p.m.]: I support the earlier amendments moved by the Hon. R. S. L. Jones. We have seen many examples of flooding, through artificial impoundments and works in many areas, not only in New South Wales but throughout Australia. The Hon. Richard Jones clearly pointed out that such flooding destroys vegetation in a relatively short period. I support the amendments moved by the Hon. Richard Jones to control leases and licences, particularly in wilderness areas where waste water is an issue.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.53 p.m.]: The Government supports amendments Nos 1, 2 and 4. It is not the Government's intention that the Minister be empowered to issue a lease or licence to permit the permanent inundation of special area lands that are transferred to the National Parks and Wildlife Service, or to permit the construction of flood mitigation structures on these lands. These amendments clarify that intention.

The Hon. JOHN JOBLING [8.54 p.m.]: The Opposition supports amendments Nos 1, 2 and 4. The addition of subsections (3), (4) and (5) to new section 153B will clarify this situation. That new section will not operate to authorise the granting of leases, licences, easements or rights of way for the impoundment of water on the land. The Opposition supports the amendments to the last part of that section, which deals with the construction of flood mitigation structures on the land.

Amendments agreed to.

The Hon. RICHARD JONES [8.55 p.m.]: I move my amendment No. 3:

No. 3 Page 4, schedule 1. Insert before line 7:

(3) Subsection (2) does not authorise the granting of a lease, licence, easement or right of way for the purpose of enabling any of the following functions to be exercised in relation to the land concerned:

(a) the extraction of water, except in Tomaree National Park, Stockton Bight National Park, Stockton Bight Regional Park and Stockton Bight State Recreation Area,

(b) the construction of any building or work that is not merely minor infrastructure,

(c) the construction of minor infrastructure that is likely to significantly affect the environment,

(d) the construction of impoundments and works on the land:

(i) for the purpose of extracting water from any river, lake or watercourse, or

(ii) for the purpose of extracting ground water.

(4) It is to be a condition of any lease, licence, easement or right of way granted under this section for the extraction of water from land in Tomaree National Park, Stockton Bight National Park, Stockton Bight Regional Park or Stockton Bight State Recreation Area, as referred to in subsection (3) (a), that the extraction of water from that land:

(a) must not result in a change to any surface water levels, or any change to groundwater ecosystems, of that land, and

(b) must not cause a greater volume of water to be extracted from Tomaree National Park in any year than the average amount extracted each year during the 5 years immediately before the commencement of this subsection.

(5) The following buildings and works are not ***minor infrastructure*** for the purposes of subsection (3):

(a) new or enlarged roads,

(b) new or enlarged pipelines,

(c) new or enlarged electricity powerlines,

(d) sewage treatment plants,

(e) pumping stations and pumps,

(f) permanent accommodation,

(g) towers.

This amendment will ensure that leases, licences, easements or rights of way cannot authorise water extraction, except in Tomaree and Stockton Bight national parks, Stockton Bight Regional Park and Stockton Bight State Recreation Area; major building or works; or minor infrastructure that is likely to significantly affect the environment. The amendment will ensure that water extraction in Tomaree and Stockton Bight national parks, Stockton Bight Regional Park and Stockton Bight State Recreation Area does not change the surface water levels or ground water ecosystems and does not exceed the average amount extracted each year during the last five years.

There are only a few cases in which water extraction currently occurs or is planned to be permitted from within a national park. Where additional cases are planned, an Act of Parliament should be prepared to exclude that area from the national park. The further exploitation of the water resources from a national park should not be permitted, even if it is for drinking water. Water is currently extracted by Hunter Water from Tomaree National Park from the ground water within the national park for drinking water for Port Stephens township and nearby areas. This amendment will enable that extraction to continue, but it will limit it to an amount that does not result in changes to surface water levels within Tomaree National Park—an indicator of the impact the extraction is causing on the ground water levels within the park. It will not affect ground water-dependent ecosystems and it will not exceed in one year any of the average yearly volumes over the last five years.

Earlier this year the Government announced that a Stockton Bight national park, regional park and State recreation area would be established over the Stockton Bight sand dunes. Hunter Water wishes to retain the option of drawing water from the Stockton Bight aquifer as a back-up water supply to the Tomago sand beds. Provided that that extraction does not change ground water dependent ecosystems or cause a change in surface water levels, this amendment will enable water extraction to occur when the Stockton Bight group of reserves are created. This amendment will also ensure that "minor infrastructure" does not include new or enlarged roads, pipelines or electricity powerlines, sewage treatment plants, pumping stations and pumps, permanent accommodation or towers.

The Minister for the Environment said in his second reading speech that the types of infrastructure that are envisaged to be permitted under the proposed section 153B provisions include weather stations, rainwater gauges and survey markers. This amendment will ensure that minor infrastructure is defined to be restricted to the types of infrastructure the Minister referred to and not major infrastructure, such as new pipelines or powerlines, that would have a significant impact on national parks and reserves.

The Hon. IAN COHEN [8.56 p.m.]: On behalf of the Greens I am pleased to support the amendment moved by the Hon. Richard Jones. I acknowledge the issues over recent years involving Stockton Bight National Park and the Tomago sand beds and the impact on those areas of sandmining activities and the extraction of water by Hunter Water. The Hon. Richard Jones adequately covered those issues that could result in sustainable systems of benefit to our community, without impacting on the special ecosystems that are slowly gaining recognition by this Government.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.57 p.m.]: The Government does not support amendment No. 3, for a number of reasons. I will deal with each proposal in turn. I refer first to the amendment to proposed subsections (3) and (5), which are linked. With respect to proposed subsection (3) (a), under section 111 of the Environmental Planning and Assessment Act 1979, the determining authority, in its consideration of an activity, must examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of the activity.

I am advised that this duty to consider an environmental impact is applicable to ground water extraction activity within the special areas and would automatically be triggered if, for example, new infrastructure were proposed. These mechanisms will continue to ensure that any ground water extraction operations are undertaken in a manner that is consistent with the protection of both the water resource and the ground water-dependent ecosystems. Accordingly, this proposed amendment to the bill not only would be unnecessary but would result in a duplication of existing legislation. For that reason, the Government is unable to support the amendment. Similar arguments apply to paragraphs (b) and (c) of proposed subsection (3).

With regard to proposed subsection (4), Hunter Water Corporation, the body responsible for supplying drinking water to the people of Newcastle, currently has an interest in Tomaree National Park. In fact, all the potable water for the Tomaree peninsula area is currently sourced from groundwater reserves in an Anna Bay special area within Tomaree National Park. The proposed amendment is not supported as it would compromise the ability of Hunter Water to carry out its proper water supply functions.

I assure honourable members that groundwater extraction by Hunter Water is not unconstrained and it certainly could not continue unabated until all water is drained from the aquifers. The Water Management Act 2000 is the appropriate legislative framework to ensure the sustainable extraction of groundwater within regulations administered through the Department of Land and Water Conservation. It is a requirement on Hunter Water's existing water management licence for the Anna Bay special area that management of water resources

must be consistent with the principle of ecologically sustainable development, as in the Protection of the Environment (Administration) Act 1991. The provisions of the Water Management Act 2000 should not be unnecessarily duplicated in the National Parks and Wildlife Act. For those reasons the Government cannot support the amendment.

The Hon. JOHN JOBLING [8.59 p.m.]: The Opposition is convinced by the argument of the Government. I am very familiar with the Hunter Water Corporation and the supply of drinking water to the Newcastle and Hunter areas from the Tomaree National Park. Also of significant interest are the Tomago sand beds, one of the major sources of quality water that can be reasonably well treated. My colleague the Hon. Patricia Forsythe happily suggests that it is the best water but that may or not be factual. However, I agree that it is good quality water. To restrict interest in and access by the Hunter Water Corporation to the Tomago sand beds for the reasons proposed by the amendment would be wrong. That would place the Hunter Water Corporation in an impossible situation. Therefore, these amendments would compromise the ability of Hunter Water Corporation to carry out its proper function and to deliver quality water regularly and on an established basis to the people of the area. I note the question of the duplication of existing environmental assessment provisions in the Environment Protection Authority Act, and for those reasons the Opposition does not support the amendment.

Amendment negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.01 p.m.]: I move Australian Democrats amendment No. 2:

No. 2 Page 4, schedule 1. Insert after line 19:

(7) The Minister must cause a register to be kept of each lease, licence, easement or right of way that is granted under subsection (2).

(8) The register must be kept available for inspection by the public free of charge, during ordinary office hours, at the Head Office of the Service.

This sensible amendment is not a difficult one for the Government. The Government has a register of land that it owns and is about to make that register public as part of an existing process of defining lands and making them available to the public. The public is ultimately the owners of the land, not the Government. The Government is the curator of the land in the interests of the public. Any easements or encumbrances on national park land should be available to be viewed by everybody who is interested.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [9.02 p.m.]: The Government supports this amendment.

The Hon. JOHN JOBLING [9.03 p.m.]: The Opposition also supports the amendment. It seems that the provision of a register for leases that can be accessed by the public free of charge during ordinary business hours is a reasonable amendment.

The Hon. IAN COHEN [9.03 p.m.]: The Greens support the amendment. We always support action in legislation that adds to transparency and the opportunity for public participation, in this case, to view a register.

Amendment agreed to.

The Hon. IAN COHEN [9.04 p.m.]: I move Greens amendment No. 2:

No. 2 Page 4, schedule 1. Insert after line 19:

(7) Despite any other provision of this Act, a lease, licence, easement or right of way referred to in subsection (2) may not be granted otherwise than under this section.

The converse of Greens amendment No. 1, this amendment ensures a legal interest meant to be granted to a water authority under proposed section 153B for the purpose of water and waste water infrastructure, but it cannot instead be granted under other provisions of the National Parks and Wildlife Service. Legal interests under section 153B are meant to apply to water authorities in national parks and other reserves in special areas. These authorities should not be able to achieve the same end using other provisions of the National Parks and Wildlife Act. For example, the easement and right of way provisions under section 153 of the National Parks

and Wildlife Act may be used instead. Provisions under the National Parks and Wildlife Act do not refer to a special area plan of management as section 153B does, nor do they contain the additional accountability measures being proposed in amendments, such as the need to keep a public register of all legal interests, as referred to in the Australian Democrats amendment which has just received support. It is necessary that water authorities can only use proposed section 153B to carry out activities in national parks and other reserves in special areas. This amendment guarantees that that will occur. I commend Greens amendment No. 2 to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [9.05 p.m.]: The Government does not support this amendment. Firstly, the application of this amendment is unclear, particularly in respect of how it may affect other provisions of the National Parks and Wildlife Act 1974. Section 153B specifically enables the granting of legal interests to water authorities in special areas to enable them to exercise functions in relation to water or waste water infrastructure. The amendment is therefore unnecessary. Neither is it appropriate to prohibit the application of existing powers in this manner.

Amendment negatived.

The Hon. RICHARD JONES [9.06 p.m.]: I will not move my amendment No. 5.

Schedule 1 as amended agreed to.

Schedules 2 agreed to.

Title agreed to.

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

UNIVERSITIES LEGISLATION AMENDMENT (FINANCIAL AND OTHER POWERS) BILL

HIGHER EDUCATION 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) [9.08 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

The Government is committed to modernising and strengthening the regulatory framework in which the New South Wales higher education sector operates.

The legislative package now before the House, delivers on that commitment. It comprises –

- the Universities Legislation Amendment (Financial and Other Powers) Bill
- and the Higher Education bill.

The two bills before the House are essential to underpin NSW universities' core mission of promoting scholarship and academic excellence. The legislation will also help to secure public investment and public confidence in higher education.

These bills are responsive to the needs of the higher education sector and to the people of NSW. They are necessary because governments must deal with the demands and tensions now facing the sector in Australia.

The bills recognise the value of teaching and research, but also the need and capacity for our educational institutions to produce knowledge, and to use it.

They reflect the Government's commitment to ensuring that the NSW higher education sector is a vital participant in the knowledge economy.

The two bills will serve to assure high standards and quality delivery of higher education in New South Wales and support the development of our universities as strong, effective and vibrant public institutions, in the face of significant funding challenges, competition and uncertain times.

Our 10 public universities, together with campuses of the national Australian Catholic University, play a crucial role in advancing our economic as well as our social well-being.

Together, they currently enrol some 224,000 students—195, 000 local students and 29,000 from overseas.

In addition to our public universities, there are 30 private higher education institutions in New South Wales, catering for a further 20,000 local and overseas higher education students.

The bills are complementary in their focus. **The Universities Legislation Amendment (Financial and Other Powers) Bill** will ensure that NSW universities have the necessary powers and controls in place to enable them to prudently undertake commercial activities consistent with their core missions of quality of teaching and research.

The Higher Education Bill will align NSW legislation with a new national framework for the accreditation and quality assurance of Australian higher education.

In 2000, trade in education services was the nation's eighth largest export. The value of the NSW share was in the order of $1.4 billion, about forty percent of the national total. The flow-on effect to the wider Australian economy is immense.

The annual value of the economic impact of universities has been estimated recently at around $10.6 billion of expenditure by universities and their students in the community. These benefits are particularly apparent in regional NSW.

It is estimated that NSW regional universities and their students inject a total of $817 million direct expenditure into regional economies each year. When the flow-on economic impacts are taken into account, this expenditure results in value adding of $1.1 billion in regional NSW each year, generating more than 28,000 full-time equivalent jobs.

Passage of the Higher Education Bill will add to the value of international education provided by NSW institutions.

Implementation of this bill, together with the underpinning national quality assurance framework, will strengthen the reputation of NSW higher education in the international market and will provide assurance to Australian students regarding the standing of the higher education they receive.

Over recent years our universities have been subject to cuts in the real value of operating grants and research funding by the Commonwealth Government.

Commonwealth Government funding per student has declined by some 6.5 percent over the past five years. This has led to difficulties in containing expenditure within available funding, greater reliance on overseas and domestic student fees and pursuit of other commercial ventures.

These factors have made increased engagement in commercial activities a necessity for universities across the country and created tension between the traditional role and nature of universities and their increasing commercial imperatives.

In turn, these trends have given rise to public debate concerning the operations of universities, their exposure to financial risk and their use of public assets.

All NSW universities have powers to undertake commercial activities. These powers are longstanding. They are crucial to universities' financial viability and their capacity to compete both nationally and internationally.

They are central to universities' research and development roles, their links to industry, and to State and regional economic advancement.

Because universities' commercial activities involve significant use of public resources and directly impact on economic and social development, these activities must be undertaken subject to prudent financial management requirements, transparent processes and accountability measures.

Greater Commonwealth Government investment in higher education is crucial if Australia is to keep pace with its competitors. While the increasing pressure on the financial capacity of our public universities represents a major threat to the continuing delivery of quality higher education to the people of New South Wales, we in this place can only seek to influence those in Canberra to more adequately finance our universities.

What we must do is ensure that the regulatory frameworks governing university operations reduce the risks of any major failures in quality service.

Universities Legislation Amendment (Financial and Other Powers) Bill

New South Wales leads the nation with the proposals contained in the Universities Legislation Amendment (Financial and Other Powers) Bill.

The measures in this bill will serve the needs of modern public universities, State responsibilities for accountability and protect the public interest

The bill represents the culmination of extensive consultations with universities and the New South Wales Vice-Chancellors Conference. All NSW universities have indicated their support for the bill.

For example, I was pleased to see a recent letter from the Vice-Chancellor of the University of Western Sydney which applauded several aspects of the bill and acknowledged its ability to balance greater flexibility with accountability.

The Universities Legislation Amendment (Financial and Other Powers) Bill updates and clarifies university powers and more effectively addresses issues of commercial risk and consequent threats to the delivery of universities' core missions.

The bill removes universities from the more general *Public Authorities (Financial Arrangements) Act 1987*, commonly referred to as PAFA, and includes new provisions within university enabling Acts to govern universities financial arrangements. This makes it possible to tailor requirements to more appropriately reflect the State's role and universities' needs.

Consultations began last year in response to concerns raised by NSW universities with regard to the impact of August 2000 amendment to PAFA.

Members will recall that the Public Authorities (Financial Arrangements) Amendment Act 2000 made PAFA the principal source of legal power for public authorities to enter into financial arrangements.

PAFA, however, is not appropriate to the contemporary requirements of financial regulation of New South Wales universities.

Universities are unique public entities. They are established by State legislation, but reliant on the Commonwealth Government for substantial public funding.

They serve essential public purposes and use substantial public assets, namely State property, but remain essentially autonomous in their academic and administrative affairs.

Their unique nature requires a custom designed regulatory regime that reflects some of PAFA's characteristics but allows for a more flexible approach that is consistent with universities' contemporary missions, challenges, and nature.

Greater reliance on university Acts requires a number of changes that in part reflect existing PAFA provisions. The bill proposes amending investment provisions in universities' enabling Acts so that governing bodies' investment powers would be conferred solely by a university's Act.
As a result, a university's governing body would be authorised to invest the funds of its university in any manner approved by the Minister with the concurrence of the Treasurer.

Similar provisions to those contained in Section 25 of PAFA are proposed to enable universities to appoint or retain approved funds managers.

These amendments also address concerns raised in the New South Wales Auditor-General's report to Parliament for 1999, Volume 2. For example, this bill introduces provisions in universities' enabling Acts to limit the powers of controlled entities to those of the parent university.

The way in which universities' functions have been stated in their Acts varies. In large part, this reflects the history of particular institutions. The bill proposes to amend enabling Acts to ensure that a core set of functions is provided for each New South Wales university.

The change is to ensure clarity and certainty. The functions reflect contemporary views of what a university's activities will involve. They are not exhaustive.

Universities continue to change and any statement of functions must reflect this process of evolution. However, it must also make clear our expectations and avoid confusion.

The proposed amendments make explicit reference to those activities that are at the heart of a university's reason for being: scholarship, learning and research.

The bill acknowledges the importance of our regional universities and the needs of regional communities. References in enabling Acts to their regional focus and commitment are retained.

In addition to the principal functions, the proposed new provisions set out a range of discretionary functions, which include commercial exploitation or development, for the university's benefit, of any facility, resource or property of the university.

Our universities are vital for the State's economic growth. They make major contributions to the State's regional development. Modern universities are expected to exploit the intellectual capital that results from their research, development and teaching programs.

This bill recognises and supports universities' effective engagement in the innovation cycle and the vital links with industry and other research partners.

The bill also proposes a new approach to manage the commercial activities of universities. It proposes that universities undertake all commercial activities in a manner consistent with processes and procedures contained in ministerially approved guidelines.

The guidelines will provide comprehensive and systematic processes for the development of commercial ventures in such a way as to maximise the benefits and minimise the risks to the university and the wider community.

Core elements will include requirements for:

- undertaking feasibility and due diligence assessments,
- identifying appropriate governance and administrative arrangements, and
- undertaking risk assessment and risk management measures.

The guidelines must be able to deal with a diverse range of activities. They must be able to identify and set aside those that do not require extensive consideration because they involve no financial risk. But they must be able to deal in varying degrees of detail, with those that are commercial, and those that involve risk.

The guidelines should accord with the notion of a university actively pursuing appropriate commercial activities on the one hand, while recognising the need to protect public funds and public assets on the other.

At their core, the guidelines must assist in determining whether an activity is in the overall best interests of the university.

They must ensure that commercial activities are conducted within an appropriate corporate structure that will safeguard the university's interests and limit liability.

If necessary, guidelines may be issued to universities. However, the bill proposes that universities may develop their own guidelines for ministerial approval, and to apply their practical and operational knowledge to the task of identifying the level of risk associated with a particular activity or arrangement.

Underpinning the operation of these guidelines are the notions of prudent management and internal and external accountability.

Consistent with the need to strengthen accountability measures and sound institutional management, the bill proposes that governing bodies of universities maintain a register of commercial activities.

The register will serve as a reference link for universities' governing bodies, the Auditor-General, and the Minister. It is not intended to be a self-contained primary source of detailed information. It is recognised that the governing body of a university may delegate the task of maintaining the register. The very nature of universities' governing bodies may make delegation a necessity.

However, the responsibility for developing and implementing guidelines and for maintaining a register remains that of the governing body.

The bill makes provision for the Minister to request a report from the governing body of a university as to any commercial activity of the university. The intention is to ensure that the conduct of universities' commercial activities is subject to ministerial scrutiny, where required.

A range of accountability requirements already apply to universities, in particular setting out audit and annual reporting requirements. In addition, the New South Wales Ombudsman has powers to investigate complaints made against universities.

To ensure greater transparency, the bill proposes that universities in their annual reports be required to provide details on the implementation of any recommendation made in a report of the Ombudsman or the Auditor-General.

In addition, the Minister may refer a commercial activity to the Auditor-General or the Ombudsman for investigation.

Although a number of universities already have legislative authority to undertake activities outside New South Wales, the powers of others to do so require clarification.

This bill recognises the benefits that can come from our universities operating globally as internationally recognised institutions of good repute and standing. It makes explicit provision for the functions of each university to be exercised within or outside the State, including outside Australia.

Higher Education Bill

The Higher Education Bill 2001 will repeal the now outmoded *Higher Education Act, 1988*, and replace it with an updated statute.

The Higher Education Bill protects the quality of higher education in New South Wales by providing consistent and comprehensive institutional and course approval processes.

All Australian Governments have recognised that common accreditation and quality assurance processes are essential.

In March 2000, Australian Ministers endorsed five National Protocols for Higher Education Approval Processes and the establishment of the Australian Universities Quality Agency [AUQA].

The National Protocols serve as the blue print for Australia-wide practice.

They are designed to ensure that consistent criteria, standards and processes are applied:

- in the recognition of new universities
- the operation of overseas higher education institutions in Australia
- the registration of non self-accrediting Australian higher education providers and the accreditation of their courses.

The Australian Universities Quality Agency will audit and monitor the implementation of the National Protocols by universities and State and Territory accreditation authorities.

This bill implements these nationally agreed arrangements for higher education approval processes in New South Wales.

For the benefit of honourable members, I shall now outline the particulars of the bill.

The bill provides for the recognition of Australian universities in New South Wales and for the development of systematic and transparent processes through which such recognition can occur.

The current *Higher Education Act* provides the accreditation of higher education courses conducted by non-university institutions in NSW. The new bill will continue these arrangements.

Australian universities, because of their nature, governance, and commitment to higher learning and free inquiry, are entrusted with self-accrediting powers.

These powers extend to self-management of Commonwealth requirements covering endorsement of courses for overseas students. The bill will continue these arrangements.

The current Act protects the titles "degree" and "university". The bill will introduce new increased penalties for misusing these titles—up to $22,000—which will be the highest in Australia.

The bill will authorise approval and registration in several new areas. These include:

- Australian non-university higher education institutions operating or wishing to operate in NSW;
- overseas universities and other overseas higher education institutions operating in NSW; and
- all classes of higher education institutions operating in NSW and enrolling overseas students.

The bill will further authorise:

- the charging of fees—payable by institutions. Under the National Protocols, fees for the registration of institutions and accreditation of courses are to be charged based on substantial cost recovery and comparability with other States and Territories;
- effective reporting and monitoring of the operations and standards of approved and registered institutions.

The bill has particular relevance for local and overseas students who choose to pursue higher education studies in non-university institutions. The bill will ensure that the programs which these students access are of high quality and meet national standards.

This bill will also strengthen the university sector in this State—the National Protocols include criteria and processes for recognizing Australian universities.

NSW has had a time-honoured policy that no university is created in this State without the consent of the Parliament. The bill will strengthen that policy by providing for consistent and transparent processes to assure the community that required standards are maintained.

The substantially increased penalty for misusing the title of university will fortify this policy.

The National Protocols also prescribe requirements for overseas institutions seeking to operate in an Australian jurisdiction, including overseas institutions seeking to use the title "university".

The bill will prevent an overseas institution from operating as a university in NSW without ministerial consent.

The past decade has seen a significant growth in the participation of non-university institutions in higher education provision, in New South Wales and other eastern mainland States. Unlike Australian universities, these institutions are not self-accrediting.

The bill will continue arrangements for the accreditation of degree and other higher education courses that non-university institutions propose to conduct.

To ensure that non-university institutions are appropriately resourced, financed, and managed before they accept students into accredited programs, the National Protocols require institutions to demonstrate their capacity to deliver these programs. The bill provides for registration processes to meet this requirement.

The bill also covers the arrangements, noted in the National Protocols, where universities or other higher education institutions franchise programs to other providers.

State and Territory authorities have significant legal responsibilities in approving institutions and courses for overseas students. Arrangements for addressing these responsibilities are also covered by the National Protocols.

The bill will vest responsibility for approving non-university and overseas institutions in the Director-General of Education and Training.

The self-accrediting powers of Australian universities extend to self-management of Commonwealth requirements covering endorsement of courses for overseas students.

Other provisions of the Higher Education Bill will make explicit provision for sanctions where an institution fails to comply with any relevant terms of the legislation.

Aggrieved parties will have access to the Administrative Decisions Tribunal. Detailed implementation of the National Protocols will be assisted through powers for making regulations and ministerial guidelines.

The bill will also authorise the setting-up and maintenance of an accessible public register for approvals issued under the bill.

The provisions contained in these bills will put NSW at the forefront in meeting the needs of modern higher education.

The bills provide the regulatory framework which can ensure that appropriate standards of accountability, probity, and quality in higher education are met.

NSW universities seek to achieve excellence and responsible enterprise. This legislation provides the framework for the fulfilment of this aspiration.

The NSW university community has been consulted extensively on both bills and has indicated its support.

Other institutions of higher education have also been consulted in relation to the Higher Education Bill and they also have indicated their support.

The legislative proposals before you are essential and I commend them to the House.

The Hon. PATRICIA FORSYTHE [9.08 p.m.]: The Opposition does not oppose these bills. It accepts that they are a timely and important step forward that will enable universities to establish a modern framework more consistent with the goals of Ministers throughout Australia who are seeking to promote similar legislation. Some weeks ago I had an appropriate briefing with the then Minister's staff and his advisers in relation to the legislation. They assured me there had been consultation and general support for the legislation. In particular, I was assured that the Higher Education Bill accords with agreements reached at the Ministerial Council of Education Ministers. I then wrote to each vice-chancellor in New South Wales, as deemed appropriate by the Opposition. With the exception of one vice-chancellor they responded to my correspondence.

To a person, they said on behalf of their universities that they were supportive of the legislation. They said they had been consulted, and that their concerns had been addressed. Originally, they had sought some amendments to earlier draft bills, but those concerns had been accommodated. Indeed, the vice-chancellors were able to tell me that they now supported the legislation and were not proposing any additional amendments in respect of it. It was, therefore, of some concern to me—when late last night I got back to my computer for the first time for some hours yesterday—to discover a lengthy email on the legislation sent yesterday afternoon by the National Tertiary Education Union. First thing this morning I took steps to have the office of the Minister for Education contacted to seek advice on comments made in that email.

At the outset I have to say that perhaps it was my mistake that I had not sought to consult with the union. The Government assured me that it had consulted widely, but perhaps it too had not consulted the union. However, the union has now put forward a series of amendments. If I take note of what has appeared under my door in the last few hours—although I have not been in my office since 7:30 this morning—the union proposes a series of amendments and the Government is prepared to accept some of those amendments. I say in all earnestness to the Government that I hope it does not propose to proceed tonight beyond debate on the second reading of this bill so that members will have some time for consultation.

I have absolutely no idea what position the Opposition will take in respect of this legislation. Why? Because all of the vice-chancellors have told me that they were consulted, that they worked through some amendments with the Government and were comfortable with the bill. On the face value of that advice, and having accepted the Government's statement at its briefing that it had consulted appropriately and widely, I have no idea what the attitude of the Opposition and vice-chancellors might be to the amendments proposed by the union. I have notes from the Government indicating that it will accept a number of those amendments, and I have notes from the Greens about amendments that it is proposing, but I have absolutely no information about the rationale for the amendments that are proposed. As I have been dealing today with other legislation and other matters pertaining to Parliament, I have literally not been at my desk all day, and came into my office but 10 minutes ago to find notes under my door.

I would like to think that the Government will take a serious stance in dealing with this legislation. I regard the universities of this State as one of the most important institutions that we could promote and support. It is for that reason that I urge the Government not to progress to consideration of this legislation in Committee so that the Opposition can determine the background to the amendments proposed by the union. I want to be fair to the union, as I was to the vice-chancellors. Though the vice-chancellors have told me that they were

comfortable with the bill, the union has proposed a series of amendments, some of which the Government has intimated it will accept. I accept that I may have been wrong in not contacting the union in the first place, but the union email sent to me yesterday afternoon commenced by suggesting that the union had only just become aware that the legislation was about to be dealt with by the Legislative Council. That surprised me because I thought the Government would have made the union aware of the legislation and appropriately consulted on it.

I make those comments by way of background. I acknowledge that we have been in something of a state of flux in the area of the education portfolio over the past week. I understand that it is a new ministry with new advisers and staff, with a new representative in the upper House—although I am pleased, for old times sake, that the Minister who previously had carriage of this legislation is in this Chamber. The Coalition wants to get it right for the universities and university councils. The Opposition is mindful that the significant number of university staff throughout New South Wales have a right to be heard. I have to say, by way of background, that the position from which I have started is that the Coalition has been accepting of the legislation.

It is interesting that the Universities Legislation Amendment (Financial and Other Powers) Bill, according to the second reading speech delivered by the Minister, arises from changes to the Public Authorities Financial Arrangements Act 1987 that were introduced in this House in June last year. Those legislative amendments largely arose from volume 2 of the Auditor-General's Report of 1999. Having been alerted to that, I referred to debate last year on the public authorities bill, and from that back to the Auditor-General's Report. As members of this House of review we should be mindful of the consequences of legislation and should work through those consequences. The Minister's second reading speech on the Financial and Other Powers Bill basically said that the Public Authorities (Financial Arrangements) Bill was introduced to change some of the reporting obligations of financial authorities, and that this significantly increased role for the Treasurer arose from criticisms in the 1999 Auditor-General's Report. It occurred to me that this House allowed the passage of that legislation last year without thinking of its consequences for universities.

Much of what was proposed in last year's legislation regarding obligations to report to the Treasurer, the Treasurer's obligations regarding approval of certain actions by public authorities, and the greater powers that that legislation gave the Treasurer, did not relate specifically to universities. Universities, although largely autonomous groups operating as public authorities in New South Wales, are far more autonomous in what they do than are many other public authorities. It was for that reason that I went back to the second reading speech delivered by the Minister and then to the Auditor-General's Report to see whether this House had missed something. Why does this bill now seek to remove universities from the purview of the Public Authorities (Financial Arrangements) Act and give those universities their own Act in respect of their financial arrangements? How did we miss that connection? How did we permit additional powers to be given to the Treasurer without considering the place of universities?

The Minister's second reading speech delivered in June last year and the Auditor-General's Report of 1999 did not mention universities per se. Even though it was beholden on us as members of the upper House to have considered the impact of that legislation on universities, clearly we all missed that connection, because we are now debating a bill to remove universities from coverage by the Public Authorities (Financial Arrangements) Act and give the universities their own financial powers legislation. That places clear obligations on universities and clarifies what they may do financially. Although these legislative changes stem from changes to another Act, neither the Minister's second reading speech nor the Auditor-General's Report of 1999 mention the role and place of universities under that Act. Though everybody missed that connection at the time, the provisions of the Public Authorities (Financial Arrangements) Act are probably not appropriate for universities given the way in which the universities conduct their operations.

Equally, universities should be accountable. I am satisfied that this legislation makes it clear what universities are entitled to do, and what their objects and functions are, particularly financial powers in relation to, for example, investment, facilities, education and research. The legislation makes it clear that the fundamental role of universities is education and research but in this day and age universities fulfil many other functions. I am mindful of my university, the University of Newcastle, about which I am proud and to whose alumni committee I contribute. I am also mindful of what that university has meant to Newcastle since its creation. The University of Newcastle has contributed in a financial sense to the region. The objects and functions of universities set out in this legislation show what that university has meant to Newcastle as an educational and economic entity. The legislation is particularly apt to all the universities that have been created in regional and rural New South Wales.

In 1993-94 I chaired the Standing Committee on State Development inquiry into regional business development. At that time we drew a conclusion that a government decision to establish, amongst other things, a

university—and the others were facilities such as teaching hospitals or government departments—would have a major and dramatic economic impact on the region. The University of Newcastle was fought for by the business community of Newcastle from the 1950s until the late 1960s, when it was formally established as its own autonomous entity. In that context I recall two people in particular. One was the former Lord Mayor of Newcastle and member for Waratah, Frank Purdue. The other was a relative of mine, Alec Forsythe, who, at his death in 1993, was the deputy-chancellor of the university and had been on the council since its inception. They had argued with a group of people on a committee that the presence of a university was the making of a city.

The Hon. John Jobling: And it was.

The Hon. PATRICIA FORSYTHE: It was. In Newcastle today—the city that most honourable members still imagine to be an industrial city, a steel city—the two most important employers are the University of Newcastle and the Hunter Area Health Board. They each employ an approximately equal number of employees. The presence of a university, the money it generates, the money it gets from the Government and its power have an enormous impact on a region and, I suggest, on the whole of the State. There will be some debate, and I suspect the Greens will knock me down on this, about the role and place of universities today. Some people hold to the idea of a pure research university, established for education and research, but one that would not muddy its hands with a commercial role or view itself as a business. It is a controversial issue.

Two weeks ago I noted an article in the higher education section of the *Australian*—perhaps the day when this legislation was being debated in the other place, but around 13 November. That article is so relevant to what we are debating tonight that I wish to read from it. The article was by the retiring vice-chancellor of Murdoch University in Western Australia, Steven Schwartz, who became vice-chancellor of the university in 1996. That is probably significant to universities, as that marks the beginning of the Howard Government—the beginning of a great era. If one listened to some academics and people in the media, one would imagine this was a dark age for universities, but Steven Schwartz has painted a very different picture. The heading of the article is "Along the bumpy road to self-reliance". It begins:

> Retirement village, private school, council libraries—oh, and a university.

The article refers to the struggle of Murdoch University from its inception. That was a small university and there was talk about incorporating it into one of the larger universities, probably the University of Western Australia, over a number of years. But Murdoch survived. Mr Schwartz states in the article:

> Small research universities have the same expenses as larger ones—libraries, computing infrastructure, equipment—but a lower student base to support them. The overhead costs per student are high and discretionary income hardly exists.

We hear these woes a lot. What did this vice-chancellor do about it? He said that Murdoch had an excellent staff, a congenial atmosphere but ineffective decision making, and he decided to do something about it. He said:

> Clearly, something needed to be done. The option preferred by many universities was to lobby the government for more money … [But] we were relatively free … to help ourselves.

He said the university had enormous infrastructure, particularly land, that was largely unused. In the article he describes the university's progress as it was realised that it had assets in the form of land that had not been used. He said:

> From the start, this meant using our land assets. Murdoch University is built on a huge campus and holds other valuable land, giving the institution significant possibilities for income-generating developments. Yet for 21 years this asset had been allowed to lie dormant, providing a park for local residents.

One can imagine that, having had a park, the residents did not like change but they experienced change in the form of a retirement village, a private school, council libraries and other infrastructure. He went on:

> Finally, I worry about management. There is much cant and hypocrisy about the dangers of the corporate university. Yet some of the most famous universities in the world are corporations. The Harvard Corporation is that university's senior governing body. The truth is that universities have large budgets, many employees, serious compliance requirements and complex goals. There is much more involved in running a university than sloganeering and bashing the government. Universities don't need fewer managers, they need more, and the very best ones they can get.

The end of this is a story of success, a story of a vice-chancellor who was able to seize the opportunities presented in legislation such as this. That story makes it clear that universities can use their resources for investment. We are saying that universities need to have the approval of the Minister, and that is appropriate, because these days just under 50 per cent of funding is public money. A public role is important, but universities

should have the capacity to operate in a commercial environment. So much about this legislation deserves to be supported, because it will clarify the role of universities for the future. However, I would not want to think it is unfettered. That is the reason for ministerial approval guidelines for commercial activities and the reason that universities have to operate within them. That is perfectly appropriate.

We can imagine living in a past era and believing that universities are purely institutions of research and teaching. That is not the reality. We have to make sure a framework exists for universities to work in this modern environment. We live in a global village. Our universities are competing for students and research dollars not only within New South Wales but within Australia and around the world. Much of the legislation will ensure a solid framework for our universities, and will give them opportunities to reach out, not only for students but for research dollars. Many research dollars may come from benevolent benefactors, but funds will also come from commercial enterprises that expect to see a commercial return.

There is little pure research for the sake of research. Sadly, decisions about various research projects and programs will, at the end of the day, be guided by the fact that some of them will have a greater return in terms of dollars. That concept might not be ideal, but it has underpinned universities for a long time, and out of that some of the greatest university successes have been generated. We might want to debate something that is pure and ideal, but we must deal with reality. In the broadest sense, that covers the Universities Legislation Amendment (Financial and Other Powers) Bill.

I suspect that the Higher Education Bill goes to the heart of making clear the roles and functions of universities. As the Minister said in his second reading speech, much of this has been generated by decisions taken by Ministers across Australia since 1995 to develop agreements about the direction of universities, establishing a set of protocols and determining that a framework must be put around our universities so that the term "university" has substance and meaning in the Australian context.

Honourable members will recall that there have been a few sad examples of shonky universities finding their way into Australia, whether they managed to get registered on Norfolk Island or by other means. Those universities do not deserve the title "university" and should not be here. The Howard Government would not be proud that one such university was registered on Norfolk Island. I think the Howard Government has paid a penalty for allowing Greenwich University to be registered on Norfolk Island. This legislation will make clear which institutions can be called universities and what a degree means. Why is that important?

The Hon. John Jobling: To restore their integrity.

The Hon. PATRICIA FORSYTHE: Integrity is important to us; we are proud of our universities. As I said, we operate in a global village and we want our universities to compete on the world stage. Some 30,000 of the almost 250,000 students studying in New South Wales are overseas students. Increasingly we are seeing our universities reach into other countries. Education is the key to the future of all developing countries, having regard to the opportunities and possibilities in those countries. Why should we not want to be part of that? Why should we not want people to know that when they name an Australian university or a New South Wales university they are referring to excellence? It is about standards.

By agreement across Australia this legislation is about ensuring that we get it right, that we put in place safeguards about the functions and objectives of universities, what it means to be a university and what a degree actually means. I was interested to read the objects and functions of universities, mindful that the legislation, as I said, has come out of a set of protocols developed by the Ministerial Council on Education, Employment, Training and Youth Affairs. This matter is of interest to me because the National Tertiary Education Union has said that this legislation does not accord with all the higher education protocols that were approved and, in fact, signed off by Ministers on 31 March 2000. It is not so much that the legislation does not accord with the protocols; I suspect that it does not go far enough.

Five key protocols underpin this legislation: Protocol 1 relates to criteria and processes for recognition of universities; protocol 2 relates to overseas higher education institutions seeking to operate in Australia; protocol 3 relates to the accreditation of higher education courses to be offered by a non-self-accrediting provider; protocol 4 relates to delivery arrangements involving other organisations; and protocol 5 relates to the endorsement of courses for overseas students. This legislation is meant to set out the development of each protocol and what it means for universities. I shall refer to a couple of the objectives and functions set out for universities.

Importantly, the process for registration, accreditation and approvals of each New South Wales university has changed. Each university will have a common set of criteria, with the exception of regional

universities. The legislation makes clear the role of regional universities. It then refers to the accreditation of courses, the process that should be adopted for accrediting courses, and the role of the director-general in terms of accrediting courses. Some vice-chancellors told me that initially they had some concern about this issue. Vice-chancellors are always loathe to have their autonomy questioned in any way. However, they were assured that no part of the legislation would impact on the autonomy of universities.

I am absolutely in favour of universities having autonomy. I work quite hard for my own university, and I am a strong believer in the role that universities play in the community. But should they have absolute power? One issue relates to the accreditation of courses. Recommendation 1 of the Ramsey review of teacher education, which was undertaken last year, refers to the establishment of an institute of teachers. I hope the Government still has that on its agenda. One role of the institute would be to endorse and disendorse courses and programs of teacher education, both initial and continuing. The recommendation states that the proposed institute of teachers should be responsible for working with universities, employers and the profession to set standards for initial teacher education.

In a number of speeches—and universities have heard me give a number of these speeches—I have been supportive of what universities have done to raise the standard of teacher education in New South Wales, including the introduction of double degrees and a variety of other initiatives. Therefore, it was with some concern that at a recent meeting primary school principals in the New South Wales public education system expressed concern to me about the quality of undergraduates from one university who come to their schools to undertake teacher education training. I have no intention of naming the university, although I will take up this matter with that university.

If universities think that the provisions relating to the accreditation of courses gives them an unfettered right to dish out anything they want, and if we are serious about having quality teachers in the State in the future, from time to time someone needs to assess the quality of the graduates leaving our universities. When primary school principals tell me that they are seriously worried about the quality of undergraduates coming to their schools to undertake practical teacher training experience, it is obvious that we must work with the universities to maintain a standard—there is no suggestion that we will not work with universities in this process. If universities imagine that they have a right to dish up anything and that they will not be questioned about the quality of graduates they produce—it may not be teacher-training education; it may be some other profession—they should think again. I am taking a close interest in this matter because I have thus far given universities credit for improvements that have been made. But when a university that produces more graduates with a Bachelor of Education than any other university is criticised by those who work with graduates from that university, there is obviously a problem that must be addressed. I, for one, will turn my attention to that in forthcoming weeks. It was only quite recently that it was brought my attention.

Having said that, I make the point that I do not wish to take away powers from universities. Recently I was in Canada, where bachelor of education courses are being accredited. In Ontario two universities did not gain accreditation in the courses they offered. This State would never want to go down that path. We have had a better relationship than that with universities, but it is food for thought for universities. The ability to obtain accreditation, to be referred to as a university and to offer courses is a two-way street. Universities have to operate at a standard that is acceptable in the community. I have received advice that this bill will not be considered in Committee tonight. I trust that the new Minister's officers will take the opportunity of briefing me about the background to the amendments—I would certainly appreciate that—and I will endeavour to obtain a briefing from the National Territory Education Union.

I do not understand why everything seemed to happen in a flurry of activity late yesterday afternoon; these bills were introduced in the other place some weeks ago. If I may rely on what I have been told by vice-chancellors and on what the Minister's advisers told me previously, this legislation was clearly the subject of discussion throughout the whole of October at least. In conclusion, I indicate that the Opposition generally supports the thrust of the legislation. It is important to have universities of high quality that are well respected in communities.

Ms LEE RHIANNON [9.41 p.m.]: These cognate bills are basically sound in that they seek to create improved accountability for universities in New South Wales. Improved arrangements for the commercial activities of universities will result when this legislation is passed. The bills arise from the recognition of a need to better regulate the activities of university-controlled commercial entities. As honourable members know, the increasingly commercialised environment in which universities operate has led to a greater reliance on private sources of income. In turn, many universities have placed some of their operations on a commercial footing.

Inevitably this raises a number of public interest issues, including the use of public university resources in establishing commercial entities and commercial influence on university research activities. Universities are accountable to government by virtue of the legislation that establishes them and by virtue of the fact that they receive most of their funds from the public purse. Therefore, it is important that their operations are conducted with transparency, accountability and in the public interest.

In general, the Greens support the provisions of the bill. We have identified a number of areas in which we believe amendments are required to remove circularities and ambiguities. In other areas we have suggestions that are intended to strengthen the provisions of the bills. We appreciate the input and assistance that has been provided by the National Territory Education Union [NTEU] in formulating the amendments, which we will address in Committee. Universities have a number of crucial roles to play in modern society. In summary, those roles can be broken down into three key parts. One is the production and dissemination of economically and socially useful knowledge, general education and the development of the professions, such as medical science and engineering. Another role is scholarship and free inquiry, and by that I mean the production of knowledge and understanding that is independent of its immediate economic uses. The study of classics and theoretical physics illustrate this point. It is not easy to measure this part in economic rationalist terms. It does not sit well with a cost-benefit driven paradigm, as scholarship and free inquiry add to the overall benefits of society.

The third part is social critique and the development of dissenting views. Such a role is central to the protection and growth of the democratic society. Well-informed views are the currency of democratic process. We will always need well-informed views to counter and challenge mainstream options. The alternative is sterile and can be most dangerous. The Greens accept that there are commercial undertakings that universities can embark upon that will enhance these roles, or at least that will not cause universities any damage. However, since the early 1980s the long-term decline in per student funding of universities has driven university councils and senates to rely on non-government income. This can play out in an unfortunate way. Universities have inevitably been tempted to take the risk and compromise their core functions and values. As all honourable members know, scandals have beset academia in respect of full fee-paying students. This is an example of what can go wrong. For universities, like politicians, reputation is everything.

Tragically, many universities have had their reputations sullied. In Australia our society and, indeed, our democracy are too dependent on the freedom of academics to place those benefits at risk. The Greens have consistently argued for massive increases in public funding to restore the independence of universities. That policy was a key aspect of the Greens campaign in the most recent Federal election. In contrast to that, successive Australian Labor Party [ALP] and Coalition federal governments have demonstrated meanness when it comes to funding our universities. In part that has been driven by the major parties' fixation with tax cutting but it also arises from a desire to bring to heel their critics in the university sector. The Greens have campaigned for funding for public universities to ensure that they are not driven into commercial servitude.

The Greens recognise that there are commercial relationships that may be entered into by universities that may be valuable and add to the core functions of universities, but it is essential that those relationships be regulated in such a way that the valuable but highly vulnerable independence of universities is protected. The Greens believe that these bills are an important first step toward achieving that objective. With some improvements, that outcome can be achieved in a more thorough way than is the case currently. Australia has been well served by its academics who have been working with lower levels of funding, higher student loads and a greater administrative burden than do their equivalent overseas colleagues. Australian university staff achieve at a world's best standard and give much to the economic, cultural, political, artistic and spiritual life of our society and they do so at rates of pay that are scandalous. They also do so under conditions that are appalling, with class sizes that are an insult and with managements that are often insensitive and self-serving. We owe it to academics to do the best we can to protect the independence of their institutions. We also owe it to the students and to the wider society. Without protection, not only will universities suffer but the standing of our whole society will be diminished. I look forward to moving the foreshadowed amendments and to making some contribution to improving these bills.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.48 p.m.]: The Australian Democrats believe that the Universities Legislation (Financial and Other Powers) Amendment Bill is significant legislation because it will fundamentally change how universities operate in New South Wales. The bill will amend the 10 Acts that have established tertiary education institutions in New South Wales. The objectives of universities will be amended and will be varied a little to meet what appear to be determined specific circumstances of each university. Under this bill, university councils will maintain a register of a university's commercial activities, thereby ensuring transparency in the commercial operations of a university. The Australian Democrats support this concept.

The Minister, in co-operation with the Treasurer, may approve guidelines that outline the nature of a university's commercial activities. Generally, the reporting guidelines for councils on commercial activity is a good idea. It makes the process more uniform across the State and makes university councils more accountable. The downside of the current legislation is that it may open up the process to political interference from a Minister, especially given that Federal governments should fund universities adequately but, as they are not, universities are seeking private investment and commercial ventures to make up the shortfall.

It is questionable whether the Treasurer should have the power to direct university councils in their ventures. Councils should be given a level of autonomy to carry out ventures that have academic benefits or clearly fulfil part of their objects and functions. Currently, university councils only have the power to engage in ventures that serve their objects and interests. The amendments remove the stipulation that those ventures must be in line with those objects and interests. This means that universities would be free to set up or join enterprises purely as a profit-making exercise. Over the past several years Australian universities have become increasingly entrepreneurial in their activities, mainly out of economic necessity for a wide variety reasons.

They have embarked upon joint ventures with corporations, both domestically and overseas, to enable them to carry out research projects and generate revenue. They have also established university-owned and run commercial enterprises both on and off campus. These enterprises are either for the direct benefit of students and staff or purely to generate revenue. In the last year the media have investigated some enterprises in which Australian universities have been involved. Questions have been raised about the appropriateness and benefits, financial or otherwise, of those ventures, and about the financial competence of universities' governing bodies in making investments and engaging in joint ventures.

Whilst the Australian Democrats support private sector co-operation with universities in developing the commercial application of the creations and ideas of our young and brightest minds, we do not support the privatisation of tertiary education, in which commercial activities take centre place in setting curricula and the nature of services provided to students and faculties alike. However, we are concerned about paragraph (a) of new section 7 (3), which provides:

> the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others.

Does the provision give universities the power to commercialise and sell off just about anything they can get their hands on? This House engaged in lengthy debate about the sale of the TAFE site in the St George area, which the university had more or less been given. Does the provision mean that a student's essay or artworks could be seized by the university and sold off to the highest bidder or confiscated by the university until the student pays a release fee? Does intellectual property belong to the student, and how does that interface with the commercial interests of the university?

I also raise the issue of public good. Obviously, if universities are to contribute towards academic journals and so on, the alternative is for them to retain the information they have discovered. Clearly, universities would then behave just like private corporations and would not necessarily act in terms of open scholarship and the knowledge base of the country as a whole. Schedule 1 inserts new section 7 into the Charles Sturt University Act 1989 No. 76. It also omits the current objects of the Act and inserts a new set of objectives. The bill removes the current section 7 (1) (b), which provides for distance education for students within New South Wales and elsewhere, and makes no reference to long-distance education. I discussed the issue with the Minister's minders, who informed me that this means that Charles Sturt University will be able to continue to provide long-distance education services.

The reason for the removal of the provision is that, effectively, all universities now provide long-distance education and it is a market situation, which is understandable. The National Tertiary Education Industry Union has expressed concern that the bill does not adequately define the principal functions of universities; provides an inadequate definition of commercial functions of universities; does not require that commercial activities be consistent with the objects of universities; provides no mechanism to prevent subsidisation of commercial activities from public funding; and contains no provisions to protect against conflicts of interest on the part of university council members. The union has outlined its concerns in a document I received today. Some of those concerns have been addressed by amendments that have been foreshadowed. The Democrats support a number of those amendments and, with the reservations I have just outlined, we also support the bill.

Reverend the Hon. FRED NILE [9.56 p.m.]: The Christian Democratic Party supports the Universities Legislation Amendment (Financial and Other Powers) Bill and the Higher Education Bill. The universities bill amends the various Acts that establish universities in New South Wales. The objects of the Higher Education Bill are to make provision for the statutory recognition of certain universities and higher education institutions and for the accreditation of courses of study, and so on. I note that the Government's briefing paper states on page 3 under the heading "Consultation":

> Universities and the National Tertiary Education Union support the intention of the Bill.

That refers to some of the points made by the Hon. Patricia Forsythe. It is surprising that we have all received an extremely detailed document, comprising eight pages of close type, containing what I regard as a serious criticism of the bills, and also proposed amendments to replace sections of the bills. It is difficult to say that consultation on the bill resulted in the Opposition's support for it. There must be a split personality operating, given that the document was provided to me only tonight. I think the Hon. Patricia Forsythe also received the document today. I regard it as a very serious matter, because obviously the National Tertiary Education Union looks at this type of legislation from a particular perspective. It is similar in many ways to the union's attitude to other matters that are debated in this House. I do not criticise the union; it is entitled to its point of view.

When I was a member of the University of Wollongong council, which is the university's senate, quite often the council had to address the conflict about what was the real objective of the university. Concern was expressed about the university moving into commercial areas as a means of raising its income so it could not only operate but also expand and provide improved services for the community and its students, work in co-operation with the industry in the Illawarra area, and so on. I sense a tension between the unions, staff members, the vice-chancellor and the administrators of the university in seeking to balance the pressures brought about by those requirements.

I urge the Government to not just simply rubber-stamp this document. If the bills are based on an agreement with the other States and the Commonwealth I cannot see how we can adopt the major amendments proposed by the National Tertiary Education Union. The Government must seriously consider its objectives, and it must consult with the Commonwealth Government and the other State governments to ensure we have consistent legislation, because these amendments may result in a piece of legislation peculiar to New South Wales, particularly if one takes into account the 70 amendments to the major bill to be moved by the Greens and the large number of amendments to be moved to the Higher Education Bill. Those amendments seem to go further than the National Tertiary Education Union proposal and they raise a number of interesting points for debate about what the Greens believe should be the object of a university.

For example, the Greens propose that part of the objectives and functions of a university should be "the participation in public discourse" as a critique and content of society, as set out in paragraph (d) of their amendments, and that universities must be designers and assessors of free inquiry, as set out in paragraph (h) of their amendments. I wonder whether a hidden agenda is contained within some of the amendments to restrict existing universities and prevent further private or religious universities from opening. We know there have been successful Catholic universities, but because the Greens have strong views on religion they may argue that a Catholic university that allows free inquiry should not be registered. Universities should and do have free inquiry but the amendments seem to be in loaded terms that may have a hidden purpose. Knowing how the Greens think, I believe their purpose is quite clear.

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

SUPERANNUATION LEGISLATION AMENDMENT (MISCELLANEOUS) BILL

ROAD TRANSPORT LEGISLATION AMENDMENT (HEAVY VEHICLE REGISTRATION CHARGES AND MOTOR VEHICLE TAX) BILL

Bills received.

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

Motion by the Hon. John Della Bosca agreed to:

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

Bills read a first time.

BILL RETURNED

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

Crimes Amendment (Child Protection—Physical Mistreatment) Bill

ADJOURNMENT

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.05 p.m.]: I move:

That this House do now adjourn.

PACIFIC HIGHWAY UPGRADE

The Hon. Dr BRIAN PEZZUTTI [10.05 p.m.]: I raise an important issue about funding the Pacific Highway for its continued development. My friends in the Ballina branch of the Liberal Party have written to the Federal Government asking that it fast-track the current 10-year plan to upgrade the Pacific Highway and to meet the necessary funds to upgrade it to a 100 per cent dual carriageway between Sydney and Brisbane. It will be of considerable concern to the people of northern New South Wales, and particularly those from Queensland interested in tourism, that support be maintained to upgrade the Pacific Highway. However, no commitment has yet been given for the 470-kilometre highway section between Coopernook and Brunswick Heads for the years 2001, 2002, 2003, 2004, 2005 and 2006. In fact, no plans exist to fund any upgrade for this long and tragically fatal section of the highway.

No funds have been allocated in the 2003-04 Federal budget for any project on any part of the Pacific Highway; it is a totally blank year in the middle of the program. This makes it difficult to accept the assurance that construction of the Albury bypass is not expected to begin until 2003-04 and has no bearing on the completion of the Pacific Highway upgrade. I am deeply concerned that after the Carr Government ripped $50 million a year out of country New South Wales road funding throughout the construction phase for the Olympics that we now find the Pacific Highway dual carriageway between Newcastle and the Gold Coast is barely 50 per cent completed, and that will be the end of it by the end of 2004.

There is still a long way to go. That small step of having 40 per cent completed this year has decreased the number of deaths and major injuries by 50 per cent. Good roads save lives and save petrol. It is important to note that the $400 million Albury bypass dwarfs the sum spent by the Federal Government on the important Pacific Highway. The State Government has not increased its funding for the Pacific Highway nearly enough, not even closely matching funding for the western Sydney orbital, which is estimated to cost in my view a conservative $2 billion and which the people of Western Sydney expect will be toll free.

The Hon. Richard Jones: They aren't Labor seats up north.

The Hon. Dr BRIAN PEZZUTTI: There are Labor seats up north. Neville Newell has not been forthcoming in getting money spent on the Pacific Highway in his electorate. I accept that improvements have been made to the Pacific Highway, but it is a wild exaggeration to say that $60 million from the Federal Government will expire in four years time with no future commitment to fix this highway. Current State Government funding for the Pacific Highway will be completed in 2006, just a few years away. That is not nearly good enough for the major traffic route of this nation. There is no larger volume of traffic than from Brisbane to Sydney; traffic from Melbourne to Sydney is not as large. More deaths occur on the section of this highway from Brisbane to Sydney than elsewhere. I have a file that contains articles from local newspapers about deaths on this road. The Hon. Janelle Saffin will know that the *Northern Star* reports that every third day a death occurs on the Pacific Highway around Burringbar and between Ballina and Grafton.

Something must be done about this ongoing tragedy. I am astonished to see three-lane highways being developed. Passing lanes are being developed after the construction of these highways. These roads should be constructed properly in the first place, with dual carriageways for the length of each highway. That is the only safe way to separate traffic that is travelling in two directions. Truck drivers are crossing onto the wrong side and killing innocent people travelling the other way, and car drivers are going to sleep and crashing into trucks.

We must ensure that these roads are three-lane highways. The New South Wales Government and the Federal Government are not committed to constructing a dual carriageway for the whole of the length of the Pacific Highway, and that is a shame. The Ballina branch of the Liberal Party recently wrote to the Deputy Prime Minister and Minister for Transport, Mr Anderson, asking him to review the Federal Government's commitment.

[*Interruption*]

The Minister does not have a country Liberal standing in Tamworth, so he should not interject. The Ulmarra bypass, which was meant to have been completed last year, is still three years away from completion, and the Ballina bypass will not be completed until 2008. [*Time expired*.]

NO-TAKE MARINE RESERVES

The Hon. RICHARD JONES [10.10 p.m.]: New South Wales fisheries are in decline. Commercial production has shown a downward trend over the last 10 years. In recent surveys conducted by New South Wales Fisheries, 25 per cent of species expected to occur were not recorded. New South Wales Fisheries has also noted that most fisheries resources in this State are overexploited, fully exploited or approaching full exploitation. Not only are our fisheries in decline, they are also grossly unprotected, so much so that an incredibly tiny 0.05 per cent of marine waters in New South Wales enjoys full protection at the moment. To guard against further decline and possible total collapse, we must significantly increase the level of protection that our fisheries are afforded—and now.

As the best available evidence and resultant consensus statements issued by hundreds of marine scientists around the world attest, the best way to do that is to create a network of no-take zones along the New South Wales coast. That evidence clearly shows that no-take zones work, wherever they are created. No-take zones already exist in many biogeographical regions and in all climate zones—tropical, subtropical, warm and cool, temperate and polar. The range of habitats included in successful no-take zones is also large. Habitats include fiords, rias, estuaries, sheltered coastal waters, open continental shelves, deep oceanic waters around isolated islands, mangrove forests, coral reefs and sea mounts.

Established no-take zones exist in remote and uninhabited areas and in densely populated places. They are also operating successfully in a range of cultures and government systems, including the United States of America, New Zealand, Kenya, South Africa, the Philippines, Barbados, Belize and Chile. The scientific benefits of no-take zones are also extremely well established. No-take zones benefit commercial and recreational fisheries due to the protection they provide to important breeding sites and the insurance that they provide against local depletion of target stocks.

No-take zones decrease the likelihood of stock collapse by providing regional buffers against unanticipated fishing mortality, unforeseen management error and/or environmental changes. For example, scientists in Canada have found that it would be necessary to close approximately 80 per cent of Canada's cod fishing grounds to prevent fishery collapse. If no-take zones had been used as part of a mixed management strategy, the disaster could have been prevented with only a 20 per cent closure. No-take zones also enable species to live longer, grow larger, have greater population densities and increased egg production. For example, in the Leigh Marine Reserve in New Zealand, densities of an exploited snapper have reached nearly 40 per cent higher inside the no-take reserve than outside, and spiny lobster biomass has also increased at rates at of 5 to 11 per cent during every year of protection.

Similarly, rock lobster abundance has increased by 250 per cent and 100 per cent at Maria Island and Tinderbox reserves in Tasmania respectively; mean rock lobster carapace length increased substantially; and the number of large fin fish increased consistently by 250 per cent. The benefits of no-take zones are, however, not only substantial; they have been found to accrue exceptionally fast. In the Tasmanian Maria Island Reserve, for example, large fish increased from an average of 2.6 to 9.2 per 500 square metres—a rise of over 240 per cent in just six years. The same pattern was found at Tinderbox, where large fish increased by 300 per cent.

A study of no-take zones in New Caledonia in 1990 also found that species richness, density and biomass increased by 67 per cent, 160 per cent and 246 per cent respectively after only five years of protection. The build-up of fish biomass has also been found to be exceptionally fast in the Hol Chan Marine Reserve in Belize. Only four years after the site became fully protected, 25 per cent of reef fish species had significantly higher abundance, size or biomass. The total biomass of commercially important reef-associated fish was also 50 per cent greater at the edges of the reserve, and in the central channel it was six to 19 times higher.

Another benefit of no-take zones is the well-documented spillover effect—the emigration of species out of fully protected areas into surrounding fishing grounds. This has been evident in the no-take zone at Apo Island in the Philippines and it has been backed by local fishermen, all of whom said that their catch had at least doubled since 1985. No-take zones also create social and economic opportunities that otherwise would have been impossible—opportunities for wilderness experiences, ecotourism, scientific research and advanced marine education. No-take zones are highly attractive to tourists because they contain more interesting and spectacular biological communities than unprotected areas.

For example, in New Zealand, teachers, tourists, diving schools, artists, amateur naturalists, photographers and many others have found that no-take zones provide them with valuable features that are unavailable elsewhere, and several local businesses have opened to capture their trade—businesses such as scuba filling stations, snorkel equipment hire, cafes, a marine education centre, a camping ground and a glass-bottom boat operation. In light of this overwhelming evidence, I urge the Minister to ensure that not one, two or three, but a series or network of no-take zones is established along the New South Wales coast as soon as possible.

MALAYSIAN INTERNAL SECURITY ACT

The Hon. JANELLE SAFFIN [10.15 p.m.]: The New South Wales parliamentary Amnesty group recently had a visit which was hosted by the president of some Malaysian and Australian citizens who are actively engaged in the Abolish ISA Movement, which relates to Malaysia's Internal Security Act. Ms Au Mei Po Mabel, the delegation leader, a well-known and respected community leader and activist in our region, is married to Mr Tian Chua, the deputy leader of the Parti Keadilan Nasional, or National Justice Party—an opposition party in Malaysia. Mr Tian Chua, along with other colleagues that I know, is detained under the Internal Security Act. Tian Chua studied in Australia in the 1980s and has developed many enduring friendships with Australian citizens, particularly in the Sydney community.

On 24 April 2001 nine pro-reform activists, that is, democracy activists, were detained under the Internal Security Act. Most countries have national security laws, a fact which, in itself, is unremarkable. What is remarkable about Malaysia's Internal Security Act is that it is used—or, more correctly, abused—to violate the human rights of its citizens. Its rationale—the Act was promulgated in 1960 but it was the re-creation of a colonial national security law—is to invoke preventive detention in situations of acute national emergency. An opposition voicing political dissent is hardly what anyone would characterise as an acute national emergency, yet it is precisely that political dissent that incited authorities to invoke the ISA.

Given the way that justice has worked in Malaysia, despite some recent notable attempts by the judiciary to act independently, thereby protecting citizens' interests and community interests, it is really an abuse of the most fundamental human rights. I quote from a document published by the Abolish ISA Movement which states:

> Time and time again the Malaysian Government has used the ISA to crush alleged political threats. This legislation is a crude and outdated tool of political oppression. The ISA is nothing more than a hangover from the colonial era, which has no place in the statute books of a modern democracy.

Under the ISA, people can be detained for 60 days and held incommunicado with no access to the outside world. Furthermore, lawyers and family members are not allowed access to detainees during this initial period. A two-year detention order might then be signed and the detainee is carted off to the detention centre to serve the two-year term. Once that two-year term is up, they could be detained for another two years. The relevant section in the legislation is section 73 (1), which states:

> Any police officer may without warrant arrest and detain pending enquiries any person in respect of whom he has reason to believe—
>
> a. that there are grounds which would justify his detention under section 8; and
>
> b. that he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof.

That section is used to deal with internal opposition, not just external opposition. At the request of the visitors, I recently wrote a letter to the Home Minister, Datuk Abdullah Ahmad Badawi, which actually outlines a bit more clearly some of the things about which I and other Amnesty members are concerned. That letter states:

> Dear Sir,
>
> I am extremely concerned about the health and well being of six reform movement leaders, namely Tian Chua, Mohd Ezam Mohd Noor, Saari Sungib, Hishamuddin Rais, Lokman Adam, who are being held under the Internal Security Act (ISA) and currently waging a boycott prison food campaign in the Kamunting Detention Center.
>
> I am informed that the health condition of the detainees is deteriorating into a worrying state, with Tian Chua suffering from severe asthma, Lokman Adam urinating blood, Mohd Ezam Mohd Noor's urine contained high acid level and others become extremely weak and suffering from migraine.
>
> I am also informed that the detainees have not received any reply from you as the Home Minister to day after sending you a letter dated 16 September 2001 requesting for an explanation of their ill-treatment in the detention center. It is shocking to us to find out that you have totally ignored the request of the detainees and taken no step to resolve the issue. The international community will hold you … accountable for the inhumane and ill-treatment of these political detainees.

That is what they are. They are politicians like us who are trying to voice their opinions.

LOCAL GOVERNMENT BOUNDARY CHANGES

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [10.20 p.m.]: In October last year the Minister for Local Government announced the formation of an inquiry into the structure of eight inner Sydney and eastern suburbs areas. That inquiry, which was conducted with integrity by Professor Kevin Sproats, produced a comprehensive report that contained a solid commentary on the present structure and future options for local government in the City of Sydney, South Sydney, Leichhardt, Marrickville, Woollahra, Waverley, Randwick and Botany Bay council areas. The inquiry process and final report were well received by the public and, for the most part, the councils involved. While the Government almost immediately ruled out the major recommendation of recasting eight council areas into four, it took nearly six months for some sort of response to be approved by Cabinet. And what a response it was!

Six months of consideration of a detailed report ended two weeks ago when the Minister for Local Government, Harry Woods, detailed his plans to deliver an expanded empire to the City of Sydney, at the expense of South Sydney and Leichhardt councils, and to transfer Bondi Junction to a single council. The Bondi Junction response was appropriate, but I believe it went to the wrong council. The Government should stand condemned for the way in which it has handled this whole matter. First, the final report from Kevin Sproats was apparently leaked, or selectively released, to the *Sunday Telegraph* before the councils even had a chance to consider it. Harry Woods was not bothered by that, which leads me to think that this was a case of release by leak to avoid an immediate response from critics of the plan.

Second, it took an eternity for the Government to offer a response, and that response was little more than a selected version of events that suited the Government. Indeed, some of the Government response was not even based on any recommendation from the Sproats report. Third, I was contacted yesterday by some of the councils involved who were concerned about the time frame in which they have to make submissions to the Local Government Boundaries Commission, which will now examine and report on the Government's response to the Sproats report. The commission, which at present has only two members, has set a closing date for submissions of 5 December, which is less than a week away. Councils are expected to make submissions on the future of entire suburbs in less than a week.

What a farce! What an arrogant Government! The matters to which I have referred lend weight to the theory that this is all a done deal. Another part of the same theory is that the Government is not at all interested in community consultation on this matter. It is simply hell-bent on delivering large tracts of land to its mates at the City of Sydney. The Boundaries Commission will not accept public submissions or hold any meetings. It will simply decide on a recommendation to the Minister, who is not even bound to accept the recommendation. What a farce! No wonder there is a great deal of community concern over this proposal. During the dinner break this evening I attended a public meeting at Glebe Town Hall which was called to discuss the proposal to excise Glebe and Forest Lodge from Leichhardt council and give them to the City of Sydney. The meeting was well attended, with 300 to 400 people present. There was only one National party voter there, and that was me. Labor supporters were hanging from the rafters, and every one of them condemned the Government for its stance and its actions. They are not our people, they are the Government's people. They are decent people responding to what they believe are improper actions.

A community plebiscite is needed on these proposed changes, and there must be a careful examination of the views of both the councils and communities that will ultimately be affected There should be an examination of the impact of the changes on the council areas that will be left behind. South Sydney City

Council stands to lose a massive chunk of the area for which it is presently responsible, and Leichhardt will also lose a large rate base from both business and residential areas. But the Government does not seem to care. There has not been any talk of the effect of these changes on the remnant councils, which is an important matter, and that is fuelling the belief that the Government will move to consolidate those areas into the City of Sydney at a later time when they ultimately become financially unviable. That is a sad indictment of this Government.

HONOURABLE MEMBER FOR DAVIDSON PRIVATE MEMBER'S STATEMENT

Ms LEE RHIANNON [10.25 p.m.]: On 24 October in the Legislative Assembly the member for Davidson, Mr Andrew Humpherson, made a series of very serious allegations against me and a number of others. Mr Humpherson accused me, the Independent member for Manly, Mr David Barr, the former member for that seat, Dr Peter Macdonald, and some councillors on Warringah Council of being involved in a criminal conspiracy. Mr Humpherson described all of us as a "coalition of ambitious beneficiaries". He has effectively alleged that I have condoned death threats and am associated with terrorist tactics.

On behalf of the Greens, I totally refute all allegations made by Mr Humpherson. Nothing could be more defamatory of the Greens than the allegation that we would use or threaten violence. This cowardly attack by Mr Humpherson on people of integrity was orchestrated to assist the Federal election campaign of the member's friend and Liberal colleague Mr Tony Abbott. This was another ugly Federal election stunt, one that went seriously wrong. On behalf of the Greens, I completely condemn the use of death threats or terrorist tactics. Dr Macdonald and Mr Barr are people of exemplary character and clearly would not engage in violence or the threat of violence in any form.

The question that must be asked is: What sort of a person would make such serious yet baseless allegations? Only someone as reckless as Mr Humpherson, who is either unaware of or does not respect or understand the parliamentary process, would so seriously abuse the responsibility that goes with being a member of Parliament. Making speeches under privilege needs to be approached with the greatest responsibility and respect for the rights we are given as parliamentarians. Allegations should only be made where evidence can be produced to support them.

To make use of privilege to falsely accuse others, including fellow members of Parliament, of being complicit in death threats and terrorist tactics is well beyond the pale. Clearly, the member has stepped outside the boundaries of acceptable behaviour by a member of Parliament. This incident leads one to conclude that the member for Davidson is simply not up to being a member of Parliament. However, the shame of his actions flows on to his colleagues. It is up to Mr Humpherson's more reasonable and responsible colleagues to accept responsibility for his behaviour.

[*Interruption*]

I acknowledge the interjection of Mr Gay. I point out to him that I am talking about death threats—I urge him to listen to the rest of my speech—and the issue of responsibility. If Mr Humpherson or his Liberal colleagues have information about or have received death threats, then they must immediately report that to the police. If neither Mr Humpherson nor his colleagues have referred the incidents he spoke about on 24 October to the police, then we can only assume that Mr Humpherson has lied to the Parliament. This incident is one more low point in the history of the New South Wales Liberal Party. If Mr Gay goes on defending him, I can only say it is also a low point in the National Party.

This incident demonstrates that Mr Humpherson is not a person of sufficient character or judgement to hold a seat in this Parliament. I call on the Leader of the Opposition, Mrs Chikarovski, to immediately step in and condemn this shoddy attack on the honourable member for Manly and others. She needs to take charge of her party and once and for all stop these irresponsible tactics.

BANKING SERVICES

The Hon. PETER PRIMROSE [10.30 p.m.]: The Finance Sector Union [FSU] has been working in partnership with community groups to address many serious concerns about the direction of Australian banking. Faced with more than 2,000 bank branch closures, more than 40,000 jobs lost, spiralling fees and declining service, we have all witnessed an unprecedented rise in dissatisfaction with major banks. There has been a groundswell of community support for keeping face-to-face banking, introducing no fee and low fee accounts, and consulting with the community about branch closures. The FSU has included many community ideas in its document entitled, "Community Charter for Better Banking".

The community charter has been well received, and has earned the support of many community groups, as well as the Australian Labor Party, the Australian Democrats and the Greens. Unfortunately, the major banks are still committed to their campaign of cutbacks and closures, with still more branch closures, job losses and service reductions planned. A bank chief executive officer recently called for a change in government policy to allow the big banks to merge. Such mergers could cost up to 22,000 jobs and close hundreds of more branches. The union has been asking citizens to register their support for the following stakeholders resolution, which the banks have refused to allow to be put to their annual general meetings. The proposed resolutions are:

> Recognising shareholder concern about the long-term impact of customer and community negativity on the value of the company's shares and the current negative image of the company brought about by branch closures, high fees and charges and massive job losses that have severely reduced customer services:
>
> 1. THAT the Company address concerns about the long-term impact of customer and community negativity on the value of its shares.
>
> 2. THAT the Company address the current negative image of the company brought about by branch closures, high fees and charges and massive job losses which have severely reduced customer services.
>
> 3. THAT the Company adopt a policy of pursuing better banking, that includes a commitment to face-to-face banking, more staff to provide better service, an end to outsourcing of core bank functions and a commitment to banking services for all Australians.

I repeat that the banks have refused to put that motion to their shareholders at their annual general meetings. I urge all members to register their support with the Finance Sector Union for the motion.

Motion agreed to.

House adjourned at 10.32 p.m.