LEGISLATIVE COUNCIL

Thursday 29 November 2001

———

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

The President offered the Prayers.

TABLING OF PAPERS

The Hon. Michael Costa tabled the following reports:

Annual Reports (Department) Act 1985—Report of Tourism New South Wales for the year ended 30 June 2001

Annual Reports (Statutory Bodies) Act 1984—Report of WorkCover New South Wales for the year ended 30 June 2001

Ordered to be printed.

GENERAL PURPOSE STANDING COMMITTEE No. 5

Report

The Hon. Richard Jones, as Chair, tabled report No. 13 of the committee, entitled "Sydney Water's Biosolids Strategy", dated November 2001, together with transcripts of evidence, submissions, tabled documents and correspondence.

Report ordered to be printed.

The PRESIDENT: Order! I remind honourable members that, if they wish to speak, they should stand in their places and seek the call.

PETITIONS

Circus Animals

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

Council Pounds Animal Protection

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

Wildlife as Pets

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

CRIMES (SENTENCING PROCEDURE) AMENDMENT (ASSAULTS ON AGED PERSONS) BILL

In Committee

The Hon. JOHN HATZISTERGOS [11.12 a.m.], by leave: I move Government amendments Nos 1 to 4 in globo:

No. 1 Page 2, clause 1, lines 3 and 4. Omit all words on those lines. Insert instead:

This Act is the *Crimes (Sentencing Procedure) Amendment (General Sentencing Principles) Act 2001*.

No. 2 Page 2, clause 2, line 6. Omit all words on that line. Insert instead:

This Act commences on a day to be appointed by proclamation.

No. 3 Pages 3 and 4, schedule 1, line 1 on page 3 to line 3 on page 4. Omit all words on those lines. Insert instead:

Schedule 1 Amendments

(Section 3)

[1] Section 21A

Insert after section 21:

21A General sentencing principles

(1) In determining the sentence to be imposed on an offender, a court must impose a sentence of a severity that is appropriate in all the circumstances of the case.

(2) For that purpose, the court must take into account such of the following matters as are relevant and known to the court:

(a) the nature and circumstances of the case,

(b) if the offence forms part of a course of conduct consisting of a series of criminal acts - that course of conduct,

(c) the personal circumstances of any victim of the offence, including:

(i) the age of the victim (particularly if the victim is very old or very young), and

(ii) any physical or mental disability of the victim, and

(iii) any vulnerability of the victim arising because of the nature of the victim's occupation,

(d) any injury, loss or damage resulting from the offence,

(e) the degree to which the offender has shown contrition for the offence:

(i) by taking action to make reparation for any injury, loss or damage resulting from the offence, or

(ii) in any other manner,

(f) the need to deter the offender or other persons from committing an offence of the same or a similar character,

(g) the need to protect the community from the offender,

(h) the need to ensure that the offender is adequately punished for the offence,

(i) the character, antecedents, cultural background, age, means and physical or mental condition of the offender,

(j) the prospect of rehabilitation of the offender.

(3) In addition, in determining whether a sentence under Division 2 or 3 of Part 2 is appropriate, the court must have regard to the nature and severity of the conditions that may be imposed on, or may apply to, the offender under that sentence.

(4) The matters to be taken into account by a court under this section are in addition to any other matters that are required or permitted to be taken into account by the court under this Act or any other law.

(5) This section does not apply to the determination of a sentence if proceedings (other than committal proceedings) for the offence were commenced in a court before the commencement of this section.

[2] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Sentencing Procedure) Amendment (General Sentencing Principles) Act 2001

No. 4 Long title. Omit "with respect to the penalties imposed under that Act for assaults on aged persons". Insert instead "to make further provision with respect to sentencing under that Act".

These amendments will specify a number of matters that the court must take into account when determining the sentence to be passed for a particular offence. Amendment No. 3 is quite detailed as to the aspects that the court is to have regard to in passing sentence. Section 21A of the Crimes (Sentencing Procedure) Act reflects principles enunciated both in the common law and in the Commonwealth Crimes Act. Honourable members will note that paragraph (i) of subsection (2) (c) is specifically aimed at the issues raised in the Hon. John Tingle's bill to take into account the personal circumstances of any victim, including the age of the victim. Paragraph (iii) of subsection (2) (c) requires the court to consider the occupation of the victim. That will be of assistance to professionals such as health care workers or special constables who have particularly vital roles in the community but are sometimes, by the sheer nature of their occupations, exposed to aggressive persons.

Severity is to be considered as appropriate to the crime, as well as to the nature and circumstances of the offence and the course of conduct consisting of a criminal act and the personal circumstances of the victim. The injury resulting from the offence must be considered and the degree of contrition may be relevant. Honourable members will be aware that these amendments have been changed slightly since the Government first circulated them two weeks ago, because on Thursday 16 November the High Court handed down a decision in the matter of Wong. This case was concerned with sentencing guidelines in the New South Wales Court of Criminal Appeal, a Commonwealth offence pursuant to the Commonwealth Crimes Act 1914.

Amendment No. 3 is substantially based on section 16A of the Commonwealth Crimes Act. The High Court commented that there may be potential for conflict between the sentencing guidelines promulgated by a court and the legislative requirements about matters to be taken into account on sentence. To ensure that this is not the case, section 21A (4) states clearly that the matters to be taken into account are in addition to any other matters that are required or permitted to be taken into account. For example, guilty pleas must be considered in context.

These amendments have been refined in this redraft and will also need to be read in conjunction with a further proposed amendment to the Crimes (Sentencing Procedure) Act 1919 which the Government will introduce next week to ensure certainty with a legislative basis for guidelines judgments. These are amendments of utility in that they express the view of this House that the Parliament agrees with the principles put forward in the Hon. John Tingle's bill and wants to express them in a manner more broadly consistent with the current practices of courts and to apply them more broadly than just to assaults or just to older persons.

The Hon. JOHN TINGLE [11.15 a.m.]: I support these amendments, as I said during the second reading debate. I believe that they make this a better bill by extending its scope and function to a wider variety of people who are vulnerable, thus making it a bill that has much more importance to a wider section of community.

The Hon. JAMES SAMIOS [11.15 a.m.]: I speak on behalf of the Opposition on the Crimes (Sentencing Procedure) Amendment (Assaults on Aged Persons) Bill. The object of the bill is to amend the Crimes (Sentencing Procedure) Act 1999 so as to increase the maximum penalty that may be imposed for an offence involving assault, or any other offence against the person, in circumstances in which the victim of the offence is of or above the age of 65 years. The level of increase will vary from 10 per cent if the victim is aged between 65 and 70, to 75 per cent if the victim is aged 90 or over.

The Government amendments, which have been blessed by the Hon. John Tingle, who introduced the original bill, widen the ambit of the people affected by assault. In relation to victims, the amendments take into consideration their age, particularly if they are very old or young, any physical or mental disability, their vulnerability because of the nature of their occupation, any injury, loss or damage resulting from the offence and so on. In essence, the bill deals with assaults on people who are not simply old but who have other conditions that warrant special attention, such as physical and mental disability. The Coalition believes that the legislation is warranted and it supports the amendments.

Reverend the Hon. FRED NILE [11.18 a.m.]: The Christian Democratic Party supports the amendments, which further improve the legislation as originally drafted.

Ms LEE RHIANNON [11.18 a.m.]: This is a monumental waste of time. The Hon. John Tingle has put the House through a scandalous waste of time and resources, as he acknowledges. In the second reading debate he said:

> I accepted the point that perhaps it was discriminatory to seek to apply those penalties only to crimes against the aged.

Why did the Hon. John Tingle not do his homework? Why did he not check it out before he put the House through this ridiculous charade of dealing with another piece of legislation to make this State safer? It will not make the State safer. It only allows him, his shock-jock mates and the Australian Labor Party to go through the ridiculous shadow boxing that they engage in to try to get a few more headlines. It is another headline-driven piece of legislation. He has monumentally wasted our time.

The Hon. John Tingle: Point of order: I refer to Standing Order 81. The honourable member is talking about the original motivation for and structure of this bill. That has already been dealt with in the second reading debate and in the amendments proposed by the Government. To make a personal attack on me and to suggest that I am doing something scandalous is digressing, and making imputations and reflections, and I ask you to rule her out of order.

Ms LEE RHIANNON: To the point of order: The Hon. John Tingle has shown how he is running scared. Debate in Committee is wide ranging. That is the point of going into Committee: to canvass the facts. The honourable member knows the ridiculous things that are said in this place, and I was building up to argument relevant to these amendments.

The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin): Order! In this context I do not regard it as offensive that a member would suggest that somebody has done a deal. Such language is regularly used in this Chamber. Whether a member agrees with the language is another matter. There is no point order.

Ms LEE RHIANNON: Let us recap. The Hon. John Tingle introduced this legislation on 26 September, and he must have spent half an hour or 45 minutes regaling us with how terrible crimes against elderly people are. A crime is a crime. Crimes against any people are outrageous. By singling out old people the Hon. John Tingle overstepped the mark.

The Hon. Malcolm Jones: What a terrible thing to do!

Ms LEE RHIANNON: I acknowledge the interjection from the back of the playground. I am surprised that the honourable member is interjecting. He has taken advice from the Hon. John Tingle and that advice has turned out to be expensive for him. When he takes advice from the Hon. John Tingle he should consider that it can backfire on him personally.

The TEMPORARY CHAIRMAN: Order! The honourable member will speak to the amendment.

Ms LEE RHIANNON: So, we were regaled on 26 September about the need for this very important legislation that the honourable member introduced. He was going to make it much tougher for people who commit crimes against elderly people. Then we had the wisdom from the Government: it would rewrite the whole bill and change the name. As I said in the second reading debate, as far as we can ascertain this has never happened before. The Government chose that tactic because it cannot be seen to vote against a Tingle bill. It cannot be seen to be going against something the Shooters Party has done—1988 still resonates in the Labor Council's brain. It knows it is in tricky territory so it came up with a clever plan.

The Hon. John Hatzistergos: We heard this speech last time, at the second reading stage. Remember that?

Ms LEE RHIANNON: Yes.

The Hon. John Hatzistergos: It is exactly the same speech.

Ms LEE RHIANNON: No, it is not exactly the same speech.

The TEMPORARY CHAIRMAN: Order! I ask the member to confine her remarks to the amendment.

Ms LEE RHIANNON: So, the Government has knocked out the whole lot. Why? It did so because it cannot be seen to be going against any law and order legislation. What the Government has come up with is not mandatory, it is only suggestive. Clearly it is not needed. It is an amendment to make the Government look like it is doing something. Judges already take a whole range of measures into account when handing down sentences. They do that with or without guidelines. They look at the whole context of the case and listen to all

the arguments from the prosecution and the defence. Once somebody is found guilty there is a separate hearing at which the prosecution and the defence have the opportunity to put forward their cases—whether the sentence should be lenient or tough. That is why I said that this legislation is a monumental waste of time.

The honourable member has completely ditched his original proposal. He said he accepts the point that perhaps it was discriminatory to seek to apply those penalties. Does he not check things out before he comes into this place? What has happened is highly undesirable, but it sounds good for the media. It is superficial and does not tackle the situation. Obviously an arrangement can be worked out between the Shooters Party and Labor Party so they can all come away smelling like roses. The tragedy is that they have not tackled the fundamental problems of why we have crime in this society—why young people, and increasingly people of all ages, are feeling alienated. Why do people engage in anti-social behaviour?

The Hon. Dr Brian Pezzutti: Because there are people like you out there who break the law.

Ms LEE RHIANNON: When you feel comfortable on the leather chairs, that is when you will not do anything.

The TEMPORARY CHAIRMAN: Order! Ms Lee Rhiannon will return to the subject matter of the amendment.

Ms LEE RHIANNON: I have set out the Greens' position. Our main concern is the abuse of the procedures of this place and how matters are played out between the Shooters Party and the Labor Party.

The Hon. JOHN HATZISTERGOS [11.25 a.m.]: It is interesting to hear those remarks from Ms Lee Rhiannon. On the last occasion this bill was debated we heard a tirade from her and her colleague the Hon. Ian Cohen about their positions always being consistent and how they never change. Today they said that they are opposing this bill because they think it is unnecessary and the courts should be unfettered in the way they impose sentences. That is not what the honourable member said on the last occasion. I challenged her to state her position on the bill, and she is reported in *Hansard* as saying that the changes we made were quite reasonable, because we were not creating a special category.

That is what the honourable member said about these amendments last time. Today she changes her mind. This is the Greens' position on law and order. They think it is okay last week but this week they have changed their minds. She said then that assaults on anybody are outrageous, and asked why should assaults on one group of people attract greater penalties than assaults on another group of people. She also said that the Government seems to have come to its senses on this point. In other words, she agreed with what the Government put on the last occasion but now she flip-flops, as the Greens do on so many other issues. Let us not have any lectures from the honourable member about consistency and probity on matters of this kind. Let us stop the shameful tactics and waste of time that she engages in.

Ms LEE RHIANNON [11.27 a.m.]: One thing honourable members know is that the Greens do not do flip-flops. We have principles and we have consistency. This issue will be the Government's *Tampa*. What I said last time is in no way inconsistent with what I have said today. I have not said we oppose the bill. I have spelled out the inconsistencies and the waste of time. That is one misrepresentation.

The Hon. Malcolm Jones: Do you oppose it or not?

Ms LEE RHIANNON: I have already said that. The honourable member needs to listen. The other misrepresentation I will correct came when the Hon. John Tingle replied to the second reading debate and attacked me, as he does periodically. He said that I was not in the House—but I was in the House all the time.

The Hon. Dr Brian Pezzutti: Point of order: If Ms Lee Rhiannon wants to make a personal explanation, there is a proper time and place. If she wants to discuss the amendment, she should do so.

The TEMPORARY CHAIRMAN: Order! I thank the Hon. Dr Brian Pezzutti for his advice.

Amendments agreed to.

Clause 1 as amended agreed to.

Clause 2 as amended agreed to.

Clause 3 agreed to.

Schedule 1 as amended agreed to.

Long title as amended agreed to.

Short title as amended agreed to.

Bill reported from Committee with amendments, including an amendment to the long title, and passed through remaining stages.

ANTI-DISCRIMINATION (HETEROSEXUAL DISCRIMINATION) AMENDMENT BILL

Second Reading

Debate called on, and adjourned on motion by Reverend the Hon. Fred Nile.

PUBLIC ACCOUNTS COMMITTEE MEMBERSHIP

Debate resumed from 25 October.

Reverend the Hon. FRED NILE [11.33 a.m.]: I wish to make a brief statement in support of the motion moved by the Hon. Doug Moppett. It is important that members of both Houses be involved in the Public Accounts Committee, which deals with very important matters. I acknowledge that it has been traditional to appoint only members of the Legislative Assembly to that committee. However, it is such an important committee that members of the Legislative Council should be appointed to it.

The DEPUTY-PRESIDENT (The Hon. Dr. Brian Pezzutti): Order! The Clerk advises that Reverend the Hon. Fred Nile has already spoken to the motion and is therefore out of order.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.34 a.m.]: I support the motion. It seems to me that this Parliament should be able to call upon the best brains available to ensure, through the Public Accounts Committee, that the Government is accountable for its actions. There should be more co-operation between the Houses in the appointment of members with expertise in specific areas. The motion takes into account the different political persuasions in accordance with the party composition of the House when electing members to the committee. Obviously, that is a matter of some importance.

The Australian Democrats support generally the principle of proportional representation in the Parliament as a whole—a principle honoured more in the breach than in the observance by the lower House. More variety of representation would enhance accountability. If the motion is unsuccessful, some issues within the charter of the Public Accounts Committee will be examined also by General Purpose Standing Committee No. 1. That procedure, though good because it involves members of the upper House in the consideration of matters dealt with by the Public Accounts Committee, is suboptimal in the sense that it involves some duplication. The motion seems sound, sensible and reasonable, and I urge all honourable members to support it.

The Hon. DOUG MOPPETT [11.36 a.m.], in reply: I had thought, until recently, that this idea was quietly incubating in the warmth of bipartisan support. One who stands back from party politics recognises this as an eminently good idea whose time has come, based on events that I outlined in my speech in moving the motion relating to changes in recent years to the constitution of this House and the nature of its business. I would have thought that a proposal to include members of the Legislative Council in the membership of the Public Accounts Committee—in view of developments and changes in public expectations regarding scrutiny of public accounts and public expenditure—would have been regarded as almost unexceptional and that it would have attracted the support of both sides of the House.

In introducing the motion I probably exhibited complacency arising from the expectation of support from all members of the House. Sadly, it appears that the leaden hand of the Labor caucus has descended upon this fresh, bright idea and essentially threatens to kill it off. The reason is perfectly obvious. It is not that members of this House who are entitled to, and do proudly, attend the caucus are opposed to the idea. It is that their colleagues in the lower House believe that the Public Accounts Committee is one of those privileges that they want to hold unto themselves and will not allow to be sequestered to any other group of people, no matter how legitimate their claim to involvement in it.

It was obvious that was the case because, after one of those fatal meetings and during the development of the debate, a trickle of tatterdemalion-like Government members—some slinking, some strident, kicking tins and blowing whistles—came down to the Chamber bearing a gallimaufry of false arguments with which they wanted to regale the House as some sort of weak excuse as to why they would subsequently vote against the proposal. We heard first of all from our esteemed friend and colleague the Government Whip, the Hon. Peter Primrose. He said that the whole motion was ill-conceived because the proper way to bring about a change in the membership of the Public Accounts Committee was to move a private member's bill to amend the Public Finance and Audit Act 1983.

What a specious argument! It is disingenuous to suggest that somehow or other the House was ignorant of that proposition, and certainly that the mover of the motion might be ignorant of the proposition. Obviously, to put the effort into drafting an amendment to the Public Finance and Audit Act and to submit it to the House without the prior approval of the House and without a general reference to its background would have been a fruitless exercise. So I disregarded that argument as a shabby excuse for introducing a decision made by other people and enforced upon members of the Labor caucus who attend this House.

The DEPUTY-PRESIDENT (The Hon. Dr. Brian Pezzutti): Order! I interrupt the Hon. Doug Moppett's speech to welcome students from Mullion Creek public school who are present in the gallery.

The Hon. DOUG MOPPETT: We then heard from my esteemed friend and colleague the Hon. Jan Burnswoods. As her umbrella against the storm of reason beating down upon Labor members she chose to postulate that we are already engaged in so many committees and that the committees we served on had long lists of business still to be attended to, and she suggested that the participation of members in another committee was almost reckless and irresponsible. It is interesting to note that one report of the highly respected Standing Committee on Law and Justice, which is chaired by the Hon. Ron Dyer, introduced a recommendation that a legislation review committee—

The Hon. Don Harwin: A scrutiny of bills committee.

The Hon. DOUG MOPPETT: "Scrutiny of bills" is the correct terminology. The law and justice committee recommended that a scrutiny of bills committee be introduced as part of our committee structure. I supported that recommendation, just as I support the participation of our members on the Public Accounts Committee. I do not necessarily want that to happen overnight. I do not want members drafted onto new committees and staff rearranged tomorrow. Dividing our work so that it can be done more effectively is a worthy objective, as are decisions taken on behalf of the people of New South Wales, firstly, in relation to public accounts and, secondly, in terms of my illustration about the impact of legislation on civil rights. We would be serving the people of New South Wales better by operating joint committees of both Houses whereby not only the expertise of Government and Opposition members could be brought to bear; other parties not represented in the lower House or on the Public Accounts Committee who have a special interest in the finances and the probity of administration of our governments could make a contribution.

We stand at a watershed. There is a challenge before the House, and it is a challenge that I think goes principally to Government members at present. I would be extremely disappointed if the Treasurer led his party on to the negative side in this debate; indeed, it would be a perfidy, because he is the State's Treasurer. He follows a line of distinguished people who have served as New South Wales Treasurer. If the Hon. Michael Egan were in the Chamber I would tell him that William Balcombe would look down from the portrait that is hanging in the Treasurer's office and wince, and say, "Oh thou of little faith" if the Hon. Michael Egan leads his party in opposition to this motion.

Although William Balcombe served the infant colony of New South Wales at a time when many people wondered what its future might be, he did not have the privilege of seeing the eventual development of a Commonwealth of Australia and he did not see the State of New South Wales become the premier State within that Commonwealth and the leading engine of the economy. As honourable members know, he was confined in those days. We have been entertained by the Treasurer's colourful descriptions of how William Balcombe, in pursuit of his duties, used to lock up in a chest under his bed in his residence in Macquarie Street the vital resources of the Crown in terms of the note and specie that kept the whole place going.

I am sure William Balcombe looked forward to the development of democracy in the colony of New South Wales. If he had been told that members of the Legislative Council were to be excluded when an opportunity arose to include them in a significant organisation such as the Public Accounts Committee, he

would have been horrified. As I said, he would have said to his successors, "Oh thou of little faith". He would have exhorted them, as I exhort the Hon. Michael Egan, to reconsider his position, even at this eleventh hour. I hope the Treasurer is listening to what I am saying, and that when he comes down to the Chamber he will urgently confer with his colleagues and say, "I recognise that this is an idea of good currency, an idea whose time has come, an idea that in fact is unstoppable. Its time of implementation may be deferred somewhat but it must be passed today." [*Time expired.*]

Question—That the motion be agreed to—put.

The House divided.

Ayes, 22

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

Noes, 14

Ms Burnswoods	Mr Kelly	Mr Tsang
Mr Costa	Mr Macdonald	Mr West
Mr Dyer	Mr Obeid	*Tellers,*
Mr Egan	Ms Saffin	Ms Fazio
Mr Hatzistergos	Ms Tebbutt	Mr Primrose

Pair

Mr Colless	Mr Della Bosca

Question resolved in the affirmative.

Motion agreed to.

Message forwarded to the Legislative Assembly advising it of the resolution.

BUSINESS OF THE HOUSE

Postponement of Business

Private Members Business Item No. 4 inside the Order of Precedence called on and postponed on motion by the Hon. David Oldfield.

GENERAL PURPOSE STANDING COMMITTEE No. 3

Reference

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.55 a.m.]: I move:

1. That the General Purpose Standing Committee No. 3 inquire into and report on the Home Warranty Insurance Scheme, as established under the Home Building Act 1989 and as amended by the Building Services Corporation Legislation Amendment Act 1996, including, but not limited to:

   (a) the process of determining approved insurance providers

   (b) the processes for ongoing reassessment of those providers

   (c) measures for encouraging new approved insurance providers

   (d) the role of the Department of Fair Trading and the Fair Trading Tribunal in dispute resolution

(e) proposals for improvements to dispute resolution processes

(f) the effectiveness of the scheme in protecting consumers and building contractors

(g) the effectiveness of the scheme in paying claims and rectifying faulty building work

(h) the process of licensing building contractors

(i) the long term financial viability of the scheme

(j) any other matter arising out of or incidental to these terms of reference.

2. That, notwithstanding anything to the contrary in the Standing Orders, the time and place for the first meeting of the Committee be fixed by the Clerk of the House.

3. That the Committee have leave to sit during any adjournment of the House, to adjourn from place to place, to make visits of inspection within the State and have the power to take evidence and to send for persons, papers, records and things, and to report from time to time.

4. (1) That, should the House stand adjourned and the Committee agree to any report before the House resumes sitting, the Committee have leave to send any such report, minutes of proceedings and evidence taken before it to the Clerk of the House.

(2) A report presented to the Clerk is:

(a) on presentation, and for all purposes, deemed to have been laid before the House,

(b) to be printed by authority of the Clerk,

(c) for all purposes, deemed to be a document published by order or under the authority of the House, and

(d) to be recorded in the Minutes of the Proceedings of the House.

The need for this motion emerged after a number of years of concern by members of the Legislative Council about the Government's handling of the home owners warranty scheme and the concerns of builders and consumers about the maintenance of the scheme. Concerns have also been expressed with equal fervour by people involved in the insurance industry about the ongoing viability of the scheme. Put simply, it is the view of the Opposition that sooner or later the State Government will have to come to the realisation that the former New South Wales Minister for Fair Trading, the Hon. John Watkins, presided over an absolute mess in the building industry in New South Wales. Honourable members will be aware that in recent times the Federal Government, prior to its outstanding election victory a few weeks ago, had taken the lead on this issue and showed a real sense of direction in taking steps that needed to be taken by calling for an inquiry into the home owners warranty schemes that operate throughout the nation. The Federal Government's move is designed to address security of the insurance industry and the standards operating within the schemes, for the benefit of consumers, builders and other providers of homes within the building industry.

At this stage of the debate it is appropriate to place on record the fever-pitch rate at which the former New South Wales Minister for Fair Trading, the Hon. John Watkins, worked with the former Federal Minister for Financial Services and Regulation to get an inquiry up and running. I look forward to discussing that matter in some detail during this debate. At this early stage, however, it is worthwhile noting that the former Minister did absolutely everything he could, short of threatening the Federal Minister, to have the inquiry established in the public arena to provide him with an opportunity to flick pass responsibility for the continuing neglect by him and his officers of this scheme in New South Wales. The former New South Wales Minister for Fair Trading did absolutely everything he could to convince the Federal Minister to establish the inquiry; indeed, he went to the point of threatening that unless certain things occurred, he would publicly reveal the terms of reference of the committee of inquiry. In the end, things were becoming very ugly. Of course, the former Federal Minister for Financial Services and Regulation, Joe Hockey, simply wiped aside the former New South Wales Minister for Fair Trading, the Hon. John Watkins, and announced the terms of reference of the Federal inquiry in his own time.

Be that as it may, it is still important for this Parliament to maintain a watching brief in relation to the progress of the Federal inquiry. It is my view that it would be somewhat a waste of resources in New South Wales if two inquiries of a very similar nature were under way simultaneously. It is important that whilst the Federal inquiry is taking place the State Parliament maintains its role in ensuring that New South Wales is being looked after. Once the Federal inquiry has concluded, if matters remain outstanding relating to New South Wales that need to be addressed under the terms of reference on the notice paper, the Opposition will move very quickly.

Debate adjourned on motion by the Hon. Michael Gallacher.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

POLICE STATION CLOSURES

The Hon. MICHAEL GALLACHER: My question without notice is to the Minister for Police. Did the Minister announce last week that he was against the Government's plan to close as many as nine police stations in the inner metropolitan area of Sydney? Did the Minister also tell the *Newcastle Herald* this week that he could not rule out the merger of the Newcastle and Waratah local area commands, even though this would result in the closure of Newcastle police station? Will the Minister guarantee that under Labor and as the Minister responsible for this portfolio, there will not be one rule for the eastern suburbs of Sydney and another for the people of Newcastle?

The Hon. Charlie Lynn: You are allowed to answer today.

The Hon. MICHAEL COSTA: I am allowed to answer every day.

The Hon. Michael Egan: Only if the question is in order. If the question is not in order, I will take a point of order.

The Hon. MICHAEL COSTA: What if the question is silly?

The Hon. Michael Egan: A silly question is all right, as long as it is in order.

The Hon. MICHAEL COSTA: Last week I certainly did announce a decision not to proceed with the merger of the local area commands in the city east region. I made that decision after consultation with local police officers, the community and the Commissioner of Police, based upon the Government's commitment to ensuring that front-line, visible policing is the priority for local community policing. That was an important decision, and a decision that I take great pride in having made. I have not made any decisions about Newcastle. I am not aware of the matter that the Leader of the Opposition refers to. I indicated that the proposal for a super local area command in that area was on hold. I will certainly have a look at the *Newcastle Herald* and get back to the honourable member.

CHERRY GROWERS INDUSTRIAL RELATIONS OBLIGATIONS

The Hon. PETER PRIMROSE: My question is to the Minister for Industrial Relations. Will the Minister outline the efforts being made to assist cherry picking workers and employers to comply with New South Wales industrial laws?

The Hon. JOHN DELLA BOSCA: I thank the Hon. Peter Primrose for his ongoing interest in rural issues, particularly rural industrial relations issues. The Department of Industrial Relations has commenced an industry compliance campaign covering cherry orchards around Young. The campaign has been initiated as a result of concerns held by the department about the level of compliance with the New South Wales Horticultural Industry (State) Award. Both the Australian Workers Union and New South Wales Farmers Association approached the department after encountering problems during the harvest last year. As a result, the department provided information kits to more than 50 cherry orchards and to local accountants, auditors and employment agencies. The kits include an up-to-date copy of the award. This will ensure that all orchardists are able to meet their obligations under section 361 of the Industrial Relations Act 1996 to display a current copy of the relevant award in the workplace.

The department also hosted two free seminars held in Young on 20 November. The seminars covered the basic obligations of employers working under the Industrial Relations Act 1996 and the Horticultural Industry (State) Award. Approximately 65 people attended the seminars. The New South Wales Farmers Association and the Australian Workers Union were advised of the department's campaign, and representatives of employers and employers from both organisations addressed both seminars.

It should be noted that on 1 November 2001 the New South Wales Industrial Relations Commission increased pay rates for farm workers under the award. The department held particular concerns that some orchardists may not have been aware when hiring pickers that these rates had been increased. There has also

been a push by some employers to put workers on the Federal award—a move supported by the local National Party member, Russell Turner. Apparently, Mr Turner has publicly claimed that the move to a Federal award is also supported by many pickers.

The Hon. Michael Gallacher: Yes.

The Hon. JOHN DELLA BOSCA: It is interesting that the Leader of the Opposition has interjected. It would be somewhat surprising if pickers were to support such a move. As I think he probably would be aware, the State award pays more than $14 an hour, while the Federal award pays a little more than $12 an hour. So it seems that Mr Turner's claims that the pickers would prefer to earn less money needs serious testing. I am advised that the department wants to make sure that the harvest proceeds as smoothly as possible. To that end, the department has repeated its public announcement that it has no intention of inspecting time and wages records or interviewing orchard employers and employees involved in disputes about the direct payment of wages following the harvest.

If the inspectors consider that further action is warranted, this will occur well after the harvest is completed and into 2002. The work undertaken by the department in Young during the present cherry harvest is warranted and necessary. It will ensure that workers in the industry receive their correct entitlements and that employers who are doing the correct thing have a level playing field in paying to their employees the correct rates of pay under the award.

UNDERGROUND POWER CABLES

The Hon. DUNCAN GAY: My question is to the Treasurer. Is he aware that two days ago his energy Minister deemed the undergrounding of electricity cables to be an expense that the Government does not want to place on the community? Given yesterday's push by the Premier for cables to be buried, can the Treasurer, as shareholding Minister for State-owned corporations and also as Treasurer, explain to the House how the Premier's program could be funded, apart from the imposition of higher electricity bills on each and every electricity consumer?

The Hon. MICHAEL EGAN: I thank the Deputy Leader of the Opposition for his question.

The Hon. Amanda Fazio: Point of order: Earlier today the Deputy Leader of the Opposition placed on notice a motion to debate in this Chamber the need for the Standing Committee on State Development to conduct an inquiry into placing electricity lines underground. His question is out of order because it anticipates debate that is to take place in this Chamber.

The Hon. John Jobling: To the point of order: Notice was given that the motion will be moved next week. Therefore the question is perfectly in order.

The Hon. MICHAEL EGAN: To the point of order: In my view the Hon. Amanda Fazio has taken a very valid point of order. Most honourable members were in the House today when the Deputy Leader of the Opposition gave notice of a motion he intended to move in this House.

The Hon. John Jobling: He only gave notice.

The Hon. MICHAEL EGAN: That is right, he gave notice.

The Hon. John Jobling: It may never be debated; it is simply on the notice paper.

The Hon. MICHAEL EGAN: The point that the Hon. John Jobling makes is very interesting. Effectively, he is saying that today the Deputy Leader of the Opposition wasted the time of the House in giving notice of a motion that he has no intention of ever moving. If he does have an intention of moving that motion obviously the question anticipates debate on that motion. If he does not intend moving the motion he has been trifling with the House today and should be thrown out of the House.

The PRESIDENT: Order! The rule relating to anticipation is quite flexible. However, it would seem to me that if an item has been placed on the notice paper—

The Hon. Duncan Gay: It is not on the notice paper—

The PRESIDENT: It would seem to me that if the intention has been stated to place an item on the notice paper, the item will be on the notice paper the following day. Therefore a question that canvasses the same subject matter in fact anticipates debate on that item. I rule the question out of order.

[*Questions without notice interrupted*]

DISSENT

Ruling of the President

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [12.10 p.m.]: I move:

That the House dissent from the ruling of the President.

It is a longstanding belief that honourable members should be able to find out in question time what happens in relation to the Government. This morning I gave notice of a reference to the Standing Committee on State Development to find out the facts on a particular matter. That will be discussed at some time. That reference will be listed on the notice paper tomorrow, not today. It is not on the notice paper today. Madam President may not agree with that reference, but it is not on the notice paper today. Yesterday the Premier made an important statement about the undergrounding of power lines in this State. A Senate inquiry has costed that project at about $5,000 per customer, and Paul Broad on *Stateline* said that it could be even more. My question to the Treasurer who is also a shareholding Minister was "How will it be funded?" That is a proper question to elicit knowledge for the people of New South Wales.

It is not a matter whether Madam President agrees with the information I was trying to elicit; it is whether we as an Opposition and honourable members of this Parliament can ask that question. Madam President has ruled the question out of order on grounds that I do not believe and other honourable members, I hope, do not believe. The motion I gave notice of this morning is not on the notice paper. But even if it were, this question should not have been ruled out of order. It is time for this House to take back the running of question time instead of having partisan decision, after partisan decision, covering up the ineptitude of this Government. Frankly, as a former presiding officer, I take this reluctant step to move dissent in a ruling. I move dissent and I hope I am supported. We really need to be able to question the Government properly on decisions that could cost a lot of money and decisions that affect the people of this State. People who are going to a by-election in two weeks time will want to know whether they will be paying $100 a year on their power bill or $25 a day for the Premier to be able to make grandiose statements to satisfy the chattering classes in Sydney.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [12.16 p.m.]: The rule against anticipation is well known by all members of this House. Occasionally we see novice members of this House, the Legislative Assembly or other Houses of Parliament in Australia who make the mistake made by the Deputy Leader of the Opposition today. But generally it is only novice members of Parliament who make the mistake of giving notice of a matter and then seeking to raise it during question time. It is a mistake only expected of a novice and not of a longstanding member of Parliament—certainly it would not be expected of the Leader of his party in this House. The motion of which the honourable member today gave notice was as follows:

1. That the Standing Committee on State Development inquire into and report on underground placement of electricity cables and associated infrastructure, and in particular:

   (a) the costs of placing existing overhead electricity cables and associated infrastructure in New South Wales underground,

   (b) the costs of placing new electricity cables and associated infrastructure underground,

   (c) the safety aspects of placing electricity infrastructure underground …

There are two other terms of reference in the motion of the Deputy Leader of the Opposition. Clearly paragraphs (a) and (b) relate to the costs of placing existing and new electricity cables underground. Of course, that is the subject of the honourable member's question to me today. I would be quite happy to answer the honourable member's question but I am prevented from doing so. It is not by any reluctance on my part, but because of the stupidity of the Deputy Leader of the Opposition, who has shot himself in the foot. He has humiliated himself by making an error, which only a novice member of Parliament would make. The Deputy Leader of the Opposition is humiliated because he is not a novice member of Parliament, he is the Leader of the National Party in this House and should have known better.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [12.18 p.m.]: Quite simply the mistake made by a relatively new honourable member in the Chamber who called for a point of order has been compounded. One need only look at the conduct of this House since the new sessional orders were introduced. The Treasurer would have been the first to take a point of order on even the slightest whiff of a mistake by the Opposition. But he was more than ready to answer the question and commenced answering, knowing that it was in order. Then a relatively inexperienced member took a point of order and she should be forgiven for that mistake. Embarrassment quickly crept through members of the Government as they realised what had happened. The problem is your ruling, Madam President, which has compounded a simple problem that could have been readily addressed.

If what the Government has put forward and your ruling are accepted, Madam President, whatever item is on the notice paper, outside the orders of precedence, can never be asked about in question time in this House. For example, Ms Lee Rhiannon wants to know how the concerns of outworkers are being addressed. Yesterday the Minister for Industrial Relations talked about his fine, sterling work with his department taking care of the problems of outworkers. Did anyone say he was out of order? We did not, because it was in order, in the same way that the question of the Deputy Leader of the Opposition is in order. It is also important to note that in his question today the Deputy Leader of the Opposition asked how underground cables would be paid for, not the cost. That is another example of the Treasurer getting it wrong. If your ruling today is upheld, Madam President, we may as well never ask another question about anything on the notice paper.

The Hon. JOHN JOBLING [12.19 p.m.]: Under the new arrangements the House has within the order of precedence on the notice paper, 12 questions on the notice paper are drawn by lot and 105 are outside the order of precedence. This question is No. 105. I draw your attention to the Legislative Council sessional orders, rule 4 relating to questions without notice, which says:

> Questions must not anticipate debate upon an order of the day or another matter on the Notice Paper, except an item of Private Members Business outside the order of precedence.

The notice given by the Deputy Leader of the Opposition is No. 105. It is outside the order of precedence. Therefore, the question does not anticipate discussion on the matter.

The Hon. RICHARD JONES [12.20 p.m.]: It appears from what honourable members have been saying that your ruling was incorrect. Are you able to change your ruling?

The PRESIDENT: Order! As the Deputy Leader of the Opposition has moved dissent from my ruling, the way in which a change in the ruling can occur is if the Deputy Leader of the Opposition withdraws his motion of dissent from my ruling. I would then allow the question.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [12.21 p.m.]: If that is an indication that there will be a change in the ruling, I would happily withdraw my dissent. If there is not going to be a change in your ruling, I will proceed with my motion.

The PRESIDENT: Order! I rule that the question is in order. Is leave granted for the Deputy Leader of the Opposition to withdraw his motion?

Leave granted.

QUESTIONS WITHOUT NOTICE

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[*Questions without notice resumed.*]

UNDERGROUND POWER CABLES

The PRESIDENT: Order! The question is in order, and the Treasurer may proceed.

The Hon. MICHAEL EGAN: Yesterday the Premier announced that he had asked the Minister for Energy to examine ways to reduce the number of overhead electricity cables in the State. We do not know at this stage how much that is going to cost and we await the outcome of an inquiry, which will be chaired by the Deputy Leader of the Opposition. We will deal with the question the Deputy Leader of the Opposition has asked when we get a report from his committee.

The Hon. DUNCAN GAY: I ask a supplementary question: My question was not about the cost but about how the matter was going to be funded. Can the Treasurer tell me whether the funding would happen by imposing a levy on electricity customers as part of their bill? Would that mean, after contestability, that customers would receive two bills, one for supply from one company and one for infrastructure from another company?

The Hon. MICHAEL EGAN: We do not know how anything will be funded until we know what it will cost.

POLICE SNIFFER DOGS

The Hon. PETER BREEN: My question without notice is to the Minister for Police. Will the Minister inform the House of the legal basis for using police sniffer dogs for the search and seizure of illegal drugs? Is the Minister aware that sniffer dogs are rewarded for targeting young people with long hair who are dressed in a particular way? Will the Minister say how many "hits" are made by sniffer dogs that do not result in an arrest but which result in a reward for the dog? Does the Minister agree that the way sniffer dogs operate can be highly offensive and intrusive, particularly to young women?

The Hon. MICHAEL COSTA: Legislation will be introduced to Parliament on the use of sniffer dogs, following the recent court decision. I reject any proposition that sniffer dogs are not used properly and with discretion by the police. They are highly trained individuals. The dogs are trained to operate in a particular manner and are utilised in a way that is not offensive to people. That has been my general advice. If the honourable member refers to me any specific instance where he has received a complaint or he knows of a problem, I will have it investigated.

DEVELOPING COUNTRIES AQUACULTURE INDUSTRY

The Hon. IAN WEST: My question without notice is to the Minister for Fisheries. Will the Minister advise the House what is being done to help developing countries as a result of New South Wales research into aquaculture?

The Hon. EDDIE OBEID: I thank the Hon. Ian West for his continuing interest in aquaculture. Aquaculture has terrific potential for development, not only in our State but also worldwide. With the strong support of the Government, our aquaculture research has gained a world-class reputation. We are participating in a number of programs to help developing countries take advantage of world seafood demand. These include a project in Thailand and Indonesia to help control white spot disease in prawns. New South Wales Fisheries is also involved in projects in Thailand, Cambodia, Laos and Vietnam working with aquaculture feeds. With the Indian Government, we are looking at developing aquaculture in saline areas. I am pleased to advise the House that the New South Wales Government is currently working with the Vietnamese Government to develop a Pacific oyster industry in northern Vietnam.

New South Wales Government scientists have outstanding skills and research in this industry, which is based around Port Stephens. Last month, five million juvenile oysters from the New South Wales Government hatchery were released to local growers. The area currently harvests $1.7 million worth of Pacific oysters. Interest in this industry is steadily increasing as more growers join the industry that complements Sydney rock oyster production. In effect, Port Stephens growers can harvest Pacific oysters in winter and Sydney rock oysters in the warmer months. This ability to grow two crops increases profitability and reduces risk.

This week, a senior research scientist from New South Wales Fisheries is visiting Vietnam as a guest of that Government for the first stage of our joint project. He will be helping the Vietnamese Government select a farm site and develop a hatchery. Following this visit, two Vietnamese technicians will train at the Port Stephens fisheries centre. During their stay they will be involved in all aspects of hatchery production. As part of this project, Pacific oyster broodstock and spat will be raised at Port Stephens and sold for trial hatchery production runs in Vietnam. It is anticipated that this joint government project will take 12 months to complete. I thank my colleague the Hon. Henry Tsang, who is the Government adviser on East Asian business, for his commitment and hard work in achieving many of these ventures. This project is a great use of our world-class research and I am delighted that we can help the people of Vietnam and other nations in our area in such a practical way.

NON-GOVERNMENT ORGANISATION GRANTS

The Hon. IAN COHEN: My question is addressed to the Treasurer. I commend the Government's decision to increase grant levels to help non-government organisations [NGOs] meet their increased costs.

However, at the time of the decision the Treasurer, in a press release dated 21 November, specified that the Government would expect things in return for increased funding. How will improved accountability and greater efficiencies for NGOs, as mentioned in the press release, be defined and introduced, and how will the NGO sector be involved in the process? As the first award increases are already scheduled to be paid, when will the Government increase NGO grant levels so that they can cope with the increases?

The Hon. MICHAEL EGAN: I thank the Hon. Ian Cohen for his question. I will come back to him with a detailed response.

POLICE SERVICE CHARITY AND COMMUNITY SERVICE CHARGES

The Hon. PATRICIA FORSYTHE: My question without notice is to the Minister for Police. How does the Minister justify the police department's decision to adopt a user pays policy towards charities and community groups who seek police support for tasks such as traffic control connected with, for example, fund-raising and other activities? Will the Minister review the policy?

The Hon. MICHAEL COSTA: I do not accept that that is the policy, but I will take advice and come back to the House.

RETAIL INDUSTRY INDUSTRIAL EDUCATION CAMPAIGN

The Hon. RON DYER: I address a question without notice to the Special Minister of State, and Minister for Industrial Relations. Can the Minister inform the House how the Government's education campaigns in the retail industry are ensuring long-term compliance with New South Wales industrial laws?

The Hon. JOHN DELLA BOSCA: On previous occasions I have informed the House of the education campaigns conducted by the New South Wales Department of Industrial Relations across a range of key New South Wales industries. Since June 2001 the department's northern New South Wales office has particularly focused on a series of inspection exercises across major retail centres in Yamba, Grafton and Coffs Harbour. Notably, the department has adopted an approach of focusing on retailers on a shopping centre by shopping centre basis. This is proving to be a very effective way to educate employers who share common interests.

The northern New South Wales retail industry campaigns are scheduled to minimise any possible disruption to retailers, who obviously have a number of peak trading periods throughout the year, including of course the busy Christmas period. The first stage of the Yamba retail industry campaign is now complete. Inspections of 17 shops in Yamba uncovered 14 serious breaches of New South Wales industrial laws. Inspectors from the Department of Industrial Relations made random visits to those Yamba retailers in July and inspected the time and wage records of 78 employees. Those investigations showed that some shops were clearly paying their workers less than the minimum rate of pay. Only six shops had complied fully with New South Wales industrial laws. Following those inspections, Department of Industrial Relations inspectors are now working with a number of shops to remedy those breaches.

The Government will continue to actively enforce New South Wales industrial laws. At this stage it is anticipated that the department's inspectors will undertake further workplace inspections of Yamba shops during the first quarter of 2002. The department also will target retailers in other major northern New South Wales centres. Shopping centres in Coffs Harbour commenced receiving information kits in July 2001. Workplace inspections in those centres will be completed shortly, and additional inspections are scheduled to commence in March 2002. Similarly, in Grafton the department commenced its targeting activities in September, and workplace inspections of employment records have already been completed. The combined effect of these three campaigns will mean that retailers in northern New South Wales who ignore this State's industrial laws will be identified and, if necessary, prosecuted. But the emphasis is on education. This protects the rights of workers and economic interests of employers who do the right thing.

DEPARTMENT OF URBAN AFFAIRS AND PLANNING ASSESSMENT REPORTS

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question without notice is to the Special Minister of State, representing the Minister for Planning. In a performance audit report on the Department of Urban Affairs and Planning [DUAP] and environmental impact assessment of major projects in New South Wales, the Audit Office expressed the opinion that there would be greater public benefit in DUAP's assessment

reports being open to public scrutiny before the Minister makes a determination. Has the Minister given any consideration to the Audit Office report, and what assurances can the Minister give that public consultation and involvement in planning process will be improved?

The Hon. JOHN DELLA BOSCA: The Hon. Dr Arthur Chesterfield-Evans has asked a question of some importance. It is quite difficult to answer such a question, which might otherwise be placed on the notice paper. Of course, the Minister for Planning is a champion of public consultation and transparency. It is important to emphasise that the Minister has implemented a regime of transparency and his continued unwinding of those issues has attracted a great deal of public support from a wide variety of communities that have had contact with the department since the Minister was given responsibility for that department. I am not able to answer the specific issue raised in the question asked by the Hon. Dr Arthur Chesterfield-Evans, but I am quite confident that my colleague the Minister for Planning will be able to provide me with an answer, which I will forward to the Hon. Dr Arthur Chesterfield-Evans at the first available opportunity.

INNER-CITY HOTEL ASSAULTS

The Hon. JENNIFER GARDINER: My question is to the Minister for Police. Did the New South Wales Bureau of Crime Statistics and Research last week release a report confirming that a small number of hotels in Sydney's inner-city area were responsible for a disproportionate number of assaults? Did the report fail to identify those hotels, even though such statistics and identification had been made public in 1997? When will the Minister release the list of hotels in question, given the commitment that the Minister made on 2UE last week that he had no problems with naming those hotels? Are the hotels owned by the Hon. Paul Whelan that featured in the 1997 list still on the latest list?

The Hon. MICHAEL COSTA: I will take advice on the report and come back to the House.

MINERAL AND PETROLEUM EXPLORATION

The Hon. AMANDA FAZIO: My question is directed to the Minister for Mineral Resources. What has been done to attract further mineral and petroleum exploration in New South Wales?

The Hon. EDDIE OBEID: I thank my colleague the Hon. Amanda Fazio for her interest in the State's efforts to locate petroleum and gas resources within New South Wales. Every effort is being made by the Government to encourage investment in our State's mineral resources. By increasing our knowledge of this resource through surveys, we can provide potential investors worldwide with the latest information. Over the past few months the New South Wales Government has undertaken a number of exciting new geophysical surveys. I am pleased to advise the House that the New South Wales Government recently spent more than $620,000 on new surveys in country New South Wales. These funds are being provided from the New South Wales Government's $30 million Exploration New South Wales initiative, which is designed to encourage investment in this State.

This week the Government is spending $44,000 for a new survey near Tibooburra in the State's north-west. The information being gathered from this survey will add to our knowledge of the potential for petroleum in this area. This gravity survey will help us know more about the shape and structure of local rocks which may be linked to known resources in Queensland. Last week a new $180,000 survey began in the Braidwood area, looking for potential deposits of gold, copper, lead and zinc. The survey will cover more than 5,000 square kilometres and will add to our knowledge of available resources. Information from this survey is expected to be released early next year.

In Melbourne this week, industry representatives at the Eastern Australian Basins Symposium have been given the chance to see the latest maps from a survey recently carried out in the Moree area. This $177,000 survey has provided new geophysical information about the potential for petroleum exploration in the Surat Basin. Earlier this month delegates of the Mining 2001 International Conference were given the latest findings of a recent New South Wales Government survey of the Tamworth area. We have spent $225,000 investigating the potential for gold, diamonds, copper and other minerals in the southern Peel area. It is anticipated that these four geophysical surveys will encourage companies to undertake further exploration of these important areas. The New South Wales Government will continue to encourage investment and exploration and will continue its important program of mapping the State's resources.

POLICE SNIFFER DOGS

The Hon. RICHARD JONES: I ask the Minister for Police: Will sniffer dogs which are trained to detect only cannabis and which detect mainly harmless users be retrained to detect drugs such as heroin which cause significant harm and crime in the community?

The Hon. MICHAEL COSTA: The position on sniffer dogs has already been made clear on a number of occasions this week. I reiterate that sniffer dogs will be used with discretion in accordance with a set of guidelines that will be dealt with, firstly, by legislation and, secondly, by police practice.

The Hon. RICHARD JONES: I ask a supplementary question. The Minister has totally failed to answer my question. Will the dogs that are trained to detect only cannabis be retrained to detect other drugs such as heroin?

The Hon. MICHAEL COSTA: The training of dogs is a matter for police operations. However, I am happy to provide some statistics on how the dogs are trained and what particular activities they are able to undertake.

PUBLIC HOSPITAL PATIENTS CLAIM COSTS

The Hon. Dr BRIAN PEZZUTTI: My question without notice is directed to the Treasurer. Is the Treasurer aware of the announcement by the Minister for Health, the Hon. Craig Knowles, to cover for a component of claims costs over $1 million by public patients, for which visiting medical officers are liable? Has he discussed with Minister Knowles the detail of what the offer will comprise? If so, will he give an undertaking to table that information? Has he investigated the impact of this offer on the State's finances? If so, what was the result of his investigations? If not, why not?

The Hon. MICHAEL EGAN: In a sense the Hon. Dr Brian Pezzutti has misled the House; he did give me notice that he intended to ask a similar question, so it is not really a question without notice.

The Hon. John Jobling: If you had notice of the question, you should have an answer.

The Hon. MICHAEL EGAN: The Hon. Dr Brian Pezzutti gave me notice about 11.00 a.m. this morning. I have sought advice, and I must inform the House that I am not satisfied with the advice.

The Hon. Dr Brian Pezzutti: Will you come back to me later?

The Hon. MICHAEL EGAN: I will determine that in due course.

WORKPLACE INFORMATION NETWORK

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 of any initiatives the Government has taken to improve awareness of good industrial relations practice?

The Hon. JOHN DELLA BOSCA: This Government has a proud record of achievement in providing useful and practical information to both employers and employees on their industrial rights and obligations. Our broad goal is to achieve productive, equitable and harmonious workplaces. With such a large proportion of New South Wales employers and employees in small business, an important part of the work of the Department of Industrial Relations is to ensure that small business employers and their employees have access to the information, assistance and advice they need for their business to thrive. The newly formed Workplace Information Network contains three specialist units with an information and advisory focus. These are the Workplace Advisory Service, the Information and Research Service, and the Aboriginal and Torres Strait Islander Advisory Service.

This network of services links with other specialist units across the department to ensure that we provide high-quality and timely information on the workplace issues that employers and employees are most concerned about. For example, many employers have concerns about how unfair dismissal laws might affect them. A series of workshops on recruitment, retention and dismissal run by the Workplace Advisory Service have proven extremely popular with small businesses. Together with printed and web-based information and telephone advice, these workshops have helped to dispel some of the myths about legal obligations and encouraged innovative ideas about how to recruit and retain highly motivated and skilled staff.

The Aboriginal and Torres Strait Islander Advisory Service ensures that information and advice about industrial rights and obligations are provided in a culturally sensitive way to appropriate employers and employees. The Information and Research Service is a small nucleus of information specialists who are revolutionising the way information is collected, filtered and distributed to our external and internal clients, particularly with an emphasis on small business. The Workplace Information Network enables the New South Wales Government to provide impartial, accurate and timely advice designed to facilitate productive, harmonious and equitable workplace relations across New South Wales.

KINGS CROSS MEDICALLY SUPERVISED INJECTING ROOM

Reverend the Hon. FRED NILE: I ask the Special Minister of State a question relating to his responsibility for Drug Summit matters. Is it a fact that an interim report on the first six months of operations at the Kings Cross injecting room has been produced? What are the main findings of that report? Will the Minister table that report in this House so that honourable members can assess the findings?

The Hon. JOHN DELLA BOSCA: Today I received a report on the six-month evaluation of the medically supervised injecting room trial. As I intended to release the report publicly and to highlight some of its features during the day, I will take the opportunity at the end of question time to table the report in the House. The main features of the report have already been widely anticipated in the public debate and in some of my answers to previous questions. During the first six months of operation 1,503 individuals were medically assessed and registered to use the services at the medically supervised injecting centre. Registered clients made 11,237 visits to the medically supervised injecting room centre, during which their injection of drugs was supervised. The majority of registered clients—68 per cent—were male, and approximately one-third were female. Male clients accounted for the majority, or 57 per cent, of visits. The report refers to cocaine in detail, and honourable members may be interested in studying the detail of the report once I have tabled it. Cocaine was the drug most frequently used at the medically supervised injecting centre; cocaine was injected on 47 per cent of visits.

[*Interruption*]

That is remarkable, as the Leader of the Opposition quietly interjects. That was followed closely by heroin, which was injected on 45 per cent of visits. The clients made an average of eight visits in the six months. That is a range of one to 335. The average length of each visit to the medically supervised injecting centre was 30 minutes. On approximately one in every three visits a health care service was provided to the clients, in addition to the supervision of their injecting. One in 18 visits resulted in referral to further assistance. Some 49 per cent of the occasions when health care services were provided were for vein care advice. Among the 610 referrals for further assistance, 42 were for treatment for drugs of dependence, while 33 were to primary health care agencies and 25 per cent were to predominantly social welfare or welfare-related agencies and services.

During the medically supervised injecting room trial 87 drug-related clinical incidents occurred requiring medical management. That is 0.8 per cent of all visits. This included 50 heroin overdoses, which were managed by the administration of oxygen; naloxone was administered in eight cases; and there were 28 cases of cocaine-related toxicity, five benzodiazepine overdoses and four non-heroin opioid overdoses respectively. Eighty-eight individuals who sought to use the medically supervised injecting service were not registered; 26 of these individuals did not meet the registration criteria, and 62 individuals expressed a wish to use the medically supervised injecting centre but did not proceed to register at that time. I will table the report at the end of question time, at which time honourable members will be able to obtain copies of the report.

GLADESVILLE POLICE LOCAL AREA COMMAND

The Hon. GREG PEARCE: My question is to the Minister for Police. Is he aware that since 1 July 1997 Gladesville Local Area Command has had seven commanders and that recently advertisements appeared to fill the position by way of a temporary commander? What action will he take to stop this revolving-door approach to management at the Gladesville Local Area Command? Will he give an undertaking to the House that the Gladesville Local Area Command will not be downgraded?

The Hon. MICHAEL COSTA: I am not aware of these statistics.

The Hon. Michael Gallacher: You are not having a good day today, are you?

The Hon. MICHAEL COSTA: This is a new tactic. I am not aware of the statistics in relation to Gladesville, but I will obtain details. In relation to the promotion system, the Government and my ministry are looking at that at the moment.

YOUNG PEOPLE MOBILE PHONE USE

The Hon. HENRY TSANG: My question is directed to the Minister Assisting the Premier on Youth. What action is the New South Wales Government taking to help young people to avoid mobile phone debts?

The Hon. CARMEL TEBBUTT: I thank the Hon. Henry Tsang for his question because the issue of young people and mobile phone debt is a very real issue and it is a very real concern for the New South Wales Government. It is a real issue for a couple of reasons but it is especially concerning because young people aged between 12 and 18 years make up the fastest-growing segment of the mobile phone market. Any parents with teenage children would attest to the fact that mobile phones are regarded as almost a necessity for young people. I must admit that many parents are happy for their children to have mobile phones because there is a range of security issues involved and parents are able to maintain contact with their children. Some parents are quite happy for their children to have mobile phones but there are issues associated with that.

The Hon. Michael Egan: They weren't a necessity when I was a teenager.

The Hon. CARMEL TEBBUTT: No, they were not a necessity when the Treasurer was a teenager. That is because they did not exist then. What were they using in those days, Treasurer—quills? This matter is especially concerning because, as I said, young people make up the fastest-growing segment of the mobile phone market. This is an issue that I draw to the attention of both young people and the wider community whenever I get the chance. Mobile phones are now an integral part of the lifestyle of young people, particularly text messaging [SMS]. However, the ease of access to this technology is getting some young people into debt at a time when that should be the last thing on their minds. A 1999 Communications Law Centre report reveals that 18 per cent of young mobile phone users found paying the bill a bit difficult, seven per cent were struggling to pay the bill, and 17 per cent reported some anxiety or depression associated with bill payment.

The Hon. Michael Gallacher: Point of order: From recollection, on 19 September, the Minister not only answered this question but also answered it in exactly the same way as she is answering it now. Perhaps the Minister might table her answer and refer to her earlier answer that was given to the House.

The Hon. Michael Egan: There are two points to make: Opposition members are slow learners so they often need to hear things more than once, and it is likely that my interjections will be different on this occasion.

The Hon. Duncan Gay: Further to the point of order: There is a rule on wasting the time of the House.

The Hon. Michael Egan: That is what you are doing.

The Hon. Duncan Gay: The Treasurer should be careful. He has had one hammering today and if I were he, I would back off. Given that this answer is already recorded in *Hansard* it would be better just to refer to the relevant page of *Hansard* in September. The Minister should clear out her House file.

The Hon. Carmel Tebbutt: Further to the point of order: I find it difficult to understand how the Opposition can take such a point of order when I have not in fact completed my answer. It would have been rather hard for me to have given an answer in September about an event that occurred last week, and that forms part of my answer.

The PRESIDENT: Order! For the information of honourable members, there is no rule stating that a member cannot waste the time of the House. There is no point of order. The Minister may proceed.

The Hon. CARMEL TEBBUTT: I will continue, Madam President, because this is an important issue. However, I understand why the Opposition is not keen to hear about the issue of mobile phone debt of young people and I know why members of the Opposition are not concerned. That is because the issue of who regulates mobile phone contracts is a federal one. On any number of occasions, the New South Wales Government—

[*Interruption*]

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

The Hon. CARMEL TEBBUTT: On a number of occasions, this Government has raised this issue with the Federal Minister for Communications, Information Technology and the Arts who made absolutely no response. [*Time expired.*]

The Hon. HENRY TSANG: I ask the Minister a supplementary question. Will the Minister elaborate further on her answer?

The Hon. CARMEL TEBBUTT: I will be glad to provide further information to the House. As I said, this issue has been raised with the Federal Government's Minister for Communications, Information Technology and the Arts on a number of occasions, but the New South Wales Government has never received any response—which just shows the commitment of the Coalition to the issue of the mobile phone debt of young people. In fact, I think it probably underscores the commitment of the Coalition to young people in general. My colleague the former Minister for Fair Trading, the Hon. John Watkins, raised this issue with the Federal Minister for Communications, Information Technology and the Arts but received no reply. I raised the issue with the Federal Minister for Communications, Information Technology and the Arts, and I received no reply.

The Hon. John Ryan: What was your suggestion?

The Hon. CARMEL TEBBUTT: I suggested a number of things, including a cooling-off period, allowing customers to cancel mobile phone contracts within a limited period after signing and credit limits for mobile phone accounts, obliging service providers to warn users when their bill exceeds a preset limit.

The Hon. Greg Pearce: What is a cooling-off period going to do?

The Hon. CARMEL TEBBUTT: The Hon. Greg Pearce has no understanding of the issue. A cooling-off period would allow young people to get some advice because what we are finding is that some mobile phone companies—

[*Interruption*]

The PRESIDENT: Order! The Hon. Greg Pearce will come to order.

The Hon. CARMEL TEBBUTT: Not all mobile phone companies, but some, are marketing heavily to young people and they are not giving young people the time to properly consider the contract. I know that the Hon. Greg Pearce is a fine master of matters legal, but not all young people are. It is actually sensible to allow young people some time to consider the contract and some time to get some advice before they sign it. Another suggestion made by the Government is pre-contractual disclosure of significant contract terms. Our information shows that young people often do not understand what they are signing up for. Another suggestion made by this Government is the specific ban on unfair conditions in contracts. Despite the fact that the Federal Government shows absolutely no interest in this issue, I am pleased to say that the New South Wales Government has taken a number of initiatives. The issue I particularly want to advise the House of is the release of the Listen Up kit. [*Time expired.*]

RECLAIM THE STREETS FESTIVAL

Ms LEE RHIANNON: I direct my question to the Minister for Police. Is he aware that the Newtown crime management unit has written to local residents and businesses boasting of its intention to break up the annual Reclaim the Streets Festival this Saturday? Will he give an undertaking that unlike last year, when I witnessed police using excessive force at the Newtown Reclaim the Streets Festival, this year police will at all times act with restraint and within the law, and will not be trying to please the Alan Jones law and order point of view?

The Hon. MICHAEL COSTA: Police in this State always act within the law and within the appropriate policies of the Police Service.

[*interruption*]

The PRESIDENT: Order! I call the Minister for Mineral Resources, and Minister for Fisheries to order.

POLICE SERVICE POLICIES AND PROCEDURES

The Hon. JOHN JOBLING: My question is to the Minister for Police. Is he aware of a statement by Assistant Commissioner Terry Collins, who just happens to be the Hunter Regional Commander, condemning

Cessnock City Council as "ludicrous" for passing a motion in August which resulted in a vote of no-confidence being conveyed to the upper echelons of the New South Wales Police Service in relation to the direction of policing in New South Wales as a result of their policies and procedures? Since becoming the Minister for Police, and given that he is a resident of Cessnock, as I understand it, has he personally conveyed to Assistant Commissioner Collins his response as the Minister for Police to the council's position, and is it in line with that of Assistant Commissioner Collins?

The Hon. MICHAEL COSTA: I am very pleased that the Hon. John Jobling has asked me the question because I was fortunate enough last Saturday to speak to local police and the local mayor about community concerns in Cessnock. I have made arrangements to speak to the council about its issue. I am sure that if there are problems, we will be able to resolve those problems to the satisfaction of the community.

OCCUPATIONAL HEALTH AND SAFETY REGULATION

The Hon. JOHN HATZISTERGOS: My question without notice is to the Special Minister of State, and Minister for Industrial Relations. Will the Minister inform the House what arrangements are in place to access information and advice about the Occupational Health and Safety Regulation 2001, which was introduced in September?

The Hon. JOHN DELLA BOSCA: I thank the Hon. John Hatzistergos for his question. Members of the public can access information and advice on the new Occupational Health and Safety Regulation by either phoning or visiting the Client Contact Centre. The centre's telephone number is 13 10 50, at the cost of a local call from anywhere in the State. The centre is presently located at the WorkCover head office, at 400 Kent Street, Sydney. Members of the public can email the Client Contact Centre on *contact@workcover.nsw.gov.au*, visit the WorkCover web site at *www.workcover.nsw.gov.au*, or phone or visit one of the many WorkCover offices located throughout metropolitan and regional New South Wales. Requests for information can also be faxed to WorkCover on 9370 5999.

When calling the 13 10 50 number, callers will be asked if they require information kits or advice. Those seeking information kits will be asked to provide their details so the distribution of kits can be arranged. Callers seeking advice will be directed to WorkCover's information officers at the Client Contact Centre. Requests for advice via the WorkCover Internet site will be sent directly to the Client Contact Centre.

The Client Contact Centre is the first point of call for inquiries. Industry-specific or hazard-specific inquiries are immediately referred to the relevant hotlines of the industry teams or the Compliance Co-ordination Team. Client Contact Centre staff have also developed frequently asked questions and answers, which are located on the WorkCover's web site. The Client Contact Centre has been set up to provide assistance, answer queries, and take requests for information on the Occupational Health and Safety Regulation.

The Hon. MICHAEL EGAN: If honourable members have further questions, they will have to wait until next Tuesday to ask them.

KINGS CROSS MEDICALLY SUPERVISED INJECTING ROOM

The Hon. JOHN DELLA BOSCA: On 27 November Reverend the Hon. Fred Nile asked me a question about the medically supervised injecting centre, and requested certain statistics. Today he again asked me about the six-monthly progress report on the medically supervised injecting centre produced by the Independent Evaluation Team. I now table that report.

Report tabled.

Ordered to be printed.

Questions without notice concluded.

REGULATION REVIEW COMMITTEE

Report

The Hon. Janelle Saffin, on behalf of the Chair, tabled report No. 21/52, entitled "Report on the Boxing and Wrestling Control Regulation 2000", dated November 2001.

Ordered to be printed.

NATIONAL PARKS AND WILDLIFE AMENDMENT BILL

Bill received and read a first time.

Motion by the Hon. Carmel Tebbutt agreed to:

That standing orders be suspended to allow the passage of the bill through all its remaining stages during the present or any one sitting of the House and that the second reading of the bill be set down as an order of the day for a later hour of the sitting.

[*The President left the chair at 1.04 p.m. The House resumed at 2.45 p.m.*]

TABLING OF PAPERS

The Hon. Ian Macdonald tabled the following papers:

(1) Annual Reports (Departments) Act 1985—Report of the Premier's Department for the year ended 30 June 2001

(2) Annual Reports (Statutory Bodies) Act 1984—Reports for the year ended 30 June 2001:

State Rail Authority of New South Wales
State Transit Authority of New South Wales.

Ordered to be printed.

BUSINESS OF THE HOUSE

Postponement of Business

Private Members' Business item No. 6 inside the Order of Precedence called on and postponed on motion by the Hon. Dr Arthur Chesterfield-Evans.

RIGHTS OF THE TERMINALLY ILL BILL

Bill introduced and read a first time.

Second Reading

The Hon. IAN COHEN [2.50 p.m.]: I move:

That this bill be now read a second time.

This bill allows a terminally ill patient with no hope of recovery, in various strictly controlled circumstances, the right to seek the assistance of a medical practitioner to help end his or her life. The tragic plight earlier this year of Norma Hall, a 72-year-old Coogee woman, a writer and mother of three, suffering terminal lung cancer with secondary cancers in her liver, bones and other organs was the driving force behind my decision to introduce this bill. As the events and circumstances surrounding Norma Hall's death unfolded, it became evident that jurisdictions in Australia are long overdue in passing voluntary euthanasia legislation. Norma, a terminally ill patient, simply wanted to die in comfort. She was not afraid of death but as an acute asthmatic she feared dying in agony and asphyxiation from the consequence of a tumour in her lung.

The bone cancer had already caused one hip bone to break. The liver cancer made her weak and nauseous, worsened by the morphine taken for pain relief. Instead of dying in comfort and at the time of her choosing, Mrs Hall's only legal option was to refuse food and drink for eight days in the hope that she would die. She hoped to be sedated so that she could avoid the worst of the suffering during those days, but she could not find a doctor who would engage in this controversial practice. The dehydration exacerbated some of her symptoms and caused her much additional physical distress. This, coupled with the pain caused by cancers, meant that Norma endured unnecessary pain and torment. When the fasting and dehydration did not work she took an overdose of prescribed drugs to end her life. It was a tragic end to an intolerable situation.

If this legislation had been passed prior to Mrs Hall's death, she would not have had to endure that final terrible week of pain and suffering. She could have had her family with her at the time of her leaving. The current law lacks compassion and mercy. It denies the right of someone who is in Mrs Hall's situation to die peacefully and in comfort and dignity, without pain and suffering. Mrs Hall and others like her should have that right. The bills seeks to give people that right.

The bill contains extremely stringent conditions and safeguards that I will outline in detail later in my speech so that honourable members have the benefit of a comprehensive assessment of the bill to provide them with adequate information on which to make an informed vote. It is based on the Northern Territory's Rights of the Terminally Ill Act 1995, which was overridden by the Commonwealth Euthanasia Laws Act in 1997. The Commonwealth Act was introduced as a private member's bill by Kevin Andrews, the Liberal member for Menzies, in 1996. The right of individuals to choose is the main reason why voluntary euthanasia should be supported. Voluntary euthanasia puts an end to the terrible suffering too often endured by terminally ill patients.

It is cruel and inhumane to compel persons to suffer when nothing can be done to relieve their suffering and when they want to end their lives. The bill allows mercy and choice. Unfortunately, for around 3 per cent to 5 per cent of the population who have a terminal illness, palliative care is simply not appropriate. Their pain cannot be controlled, or it can be controlled only by rendering them unconscious, which is known as pharmacological oblivion. Pain is not the only reason that individuals request euthanasia. Other reasons include loss of strength, loss of dignity and complete dependence on others. Even the best palliative care cannot alleviate all suffering or make an individual's situation more bearable.

Another reason to support the legislation is to preserve human dignity. Due to advances in modern medicine, many individuals find themselves facing a prolonged disintegration of their self-integrity, physically and psychologically, without any hope of a cure. Individuals in such circumstances should have the choice to avoid the suffering entailed, thereby preserving their right to dignity. They should have autonomy and self-determination. Polls consistently indicate that Australians are largely in support of voluntary euthanasia. Around the time the Northern Territory passed its voluntary euthanasia legislation, various polls found that approximately 80 per cent of the population supported the legislation.

Who has a monopoly on spirituality in society? Individuals and minorities who do not agree with the majority decision still have rights. While certain Christian and religious ethics prevent some people from taking that decision, other people have a right to make that choice. Another compelling reason to legalise voluntary euthanasia is that it is practised now, although it is not regulated. Professor Peter Baume, patron of the Voluntary Euthanasia Society of New South Wales, said on the ABC news on 23 January, around the time that Norma Hall died:

> Euthanasia is common, it's practised out of sight, under wraps, no regulation, no rules, no supervision. If that's what people want, that's what they've got.

There have been various studies and reports on euthanasia. Indeed, the most recent *Medical Journal of Australia* survey of attitudes and practises based on two-thirds of surgeons in Australia regarding their intention to hasten death found a staggering one in three surgeons reported giving drugs with an intention of hastening death, often in the absence of an explicit request. The practise was pointed out in a study by Peter Baume back in 1995 in the winter edition of *New Doctor* and again in research conducted by Helga Kuhse, Peter Singer and Peter Baume that was published in the *Medical Journal of Australia* in 1997.

Just recently, there has been discussion about suicide pills and the use of plastic bags, and other contraptions being imported from overseas jurisdictions by terminally ill people wanting to terminate their lives. If this bill is passed it will alleviate the need for people to turn to such controversial and undignified methods. A few months ago at a very interesting conference on euthanasia at Broken Hill we spoke about these issues. There was overwhelming support for whatever method could be used but, at the same time, a real desire to work legislatively so that people could die with dignity without using what would be seen as backyard methods.

Oregon and the Netherlands are two places where laws relating to voluntary euthanasia have been significantly reformed. There has been a significant step forward in the Netherlands and an acknowledgment by people in that country of the concept of voluntary euthanasia. In Oregon the Death with Dignity Act legalises physician-assisted suicide. However, it does not allow a physician or other person to directly administer medication to end a patient's life. The patient must self-administer the medication.

The Oregon legislation also contains strict safeguards and conditions, and there have been no floodgates or slippery slopes in Oregon. Last year, 39 prescriptions for lethal doses were written, and 27 patients died after using prescribed medication. In 1998, 24 scripts were written and in 1999, there were 33. In 1998, 16 took the medication and in 1999, 27 patients took the medication. The legislation is working extremely well with no evidence of abuse whatsoever.

It is interesting to note from these statistics that some terminally ill individuals are obtaining medication and either are not using it or are using it at a later date. This is the so-called comfort effect where patients feel secure and comfortable knowing they have the medication and can use it at any time—for instance,

when things get to the stage where they cannot stand it any more. Some individuals never use the medication but know they can if they want to. This is a great comfort.

The Netherlands has gone down the decriminalisation path rather than legalisation path. It is interesting to note that the Netherlands has been practising voluntary euthanasia in various forms for more than 20 years. Pain, degradation and the longing to die with dignity are the main reasons why patients request voluntary euthanasia in the Netherlands. In the Netherlands, euthanasia and assistance with suicide remain in the statute books as criminal offences. However, physicians who comply with all the conditions and criteria of due care will not be prosecuted. They must practise due care as set out in the law. They must also report the cause of death to the municipal coroner. Polls show that 92 per cent of Dutch people support voluntary euthanasia legislation.

The Greens support palliative care. We support extra funding for palliative care and welcome new advancements in that discipline. We support anything that will make terminally ill patients' lives more comfortable and bearable. However, for around 3 per cent to 5 per cent of the population who have a terminal illness, palliative care is simply not appropriate. This is recognised by Palliative Care Australia—the peak palliative care body—in its position statement on euthanasia of 19 March 1999. That statement:

> Acknowledges that while pain and other symptoms can be helped, complete relief of suffering is not always possible, even with optimal palliative care;
>
> Recognises and respects the fact that some people rationally and consistently request deliberate ending of life;

For some people pain cannot be controlled at all or can only be controlled by rendering them unconscious. This is known as pharmacological oblivion. Pharmacological oblivion is the use of sedation to the point of unconsciousness. This is extremely undignified for the patient and very distressing for family and friends, seeing their loved ones drugged to a state of unconsciousness and remaining that way until they die of dehydration and malnutrition. Can we be absolutely confident that their minds are not active and trapped in a drugged body? Dr Rodney Syme, President of the Voluntary Euthanasia Society of Victoria, has written a paper on the issue entitled "Pharmacological Oblivion—A Critique". He argues that such treatment is acceptable because death, if it occurs, is not intended. The principle of "double effect" applies. However, he is very critical of the process, arguing:

> What dignity is there in producing deliberate but fitful coma with total dependence, loss of sentience and personality and loss of other functions.

Additionally, there is a real problem with the end-of-life process. If a person is in pharmacological oblivion and he or she dies, it is impossible for the person and his or her family and friends to say goodbye to each other. The patient may die while in a drug-induced coma. This is extremely heart-rending and difficult for family and friends, as saying goodbye to a loved one about to die aids the normal grieving process. As Dr Syme points out in the conclusion to his paper on pharmacological oblivion, it has been likened to slow euthanasia, and in many respects the only distinction between pharmacological oblivion and euthanasia is the time frame in which it occurs, and the dubious matter of intent.

Quite clearly, as has been stated on many occasions, many people suffer a crescendo of pain and suffering in the final week of their illness. Under this bill, for those who choose voluntary euthanasia the crescendo of suffering and pharmacological oblivion would no longer be necessary. This bill is based on the Northern Territory Act, which was in operation for nine months, during which time four people used it. It came into force on 1 July 1996 and was overridden on 27 March 1997. During the second reading debate on the private member's bill, the mover, the Hon. Marshall Perron, the member for Fannie Bay, said of the bill:

> The law as it stands actively ensures that many doctors will not intervene to assist patients to end their suffering because of fear of legal action. This bill does no more than formalise and decriminalise a practice which occasionally occurs now but a practice for which some patients regrettably cannot find sympathetic doctors prepared to risk their careers and liberty.
>
> This Bill is about personal choice. It does not provide carte blanche for euthanasia. It contemplates no externally imposed end of life decisions for the aged, the disabled or for anyone else. In simple language it provides mentally competent, terminally ill patients with the right to choose to shorten their agony peacefully and with dignity.

I had the pleasure of hearing Marshall Perron as a keynote speaker at a Rights of the Terminally Ill Forum that I recently cohosted with the Hon. Jan Burnswoods in the Legislative Council Chamber. Once the Northern Territory legislation was up and running it became obvious that it was an overwhelming success in terms of conditions and safeguards. This can be seen by analysing the position of Denis Burke, the previous Chief

Minister of the Northern Territory. He opposed the legislation when it went through Parliament. At the time the legislation came into force he was the Attorney General and the Minister for Health, the two portfolios which administered the Act. By 11 August 1998, after the bill was overridden, he had this to say about it:

> While it was in operation, I can say honestly that I thought that it was good legislation in that, once passed by this House, it survived every attack by academics and theologians. When it was finally overridden, one would have to say in all honesty that the legislation needed not one word of amendment in terms of its workability in delivering the intent of the legislature.

The conditions and safeguards contained in the Northern Territory bill are identical to those in this bill. It should be pointed out that there is no restriction on the number of safeguards that can be contained in voluntary euthanasia legislation. Every conceivable situation could be regulated by a safeguard. I say to critics of the legislation: If you have a particular concern with the legislation, I am open to amendments to rectify any problem in it. Every loophole or possible area of abuse can be regulated.

At the moment, terminally ill patients who are suffering are faced with the worst possible situation. Voluntary euthanasia is occurring in New South Wales, yet there are no safeguards. It would be far better to regulate it with adequate safeguards than to leave it unregulated and open to abuse. Experts who worked on voluntary euthanasia before and after the Northern Territory legislation, such as Marshal Perron and Dr Philip Nitschke, have said that when the legislation was passed it was as though an enormous cloud had been lifted with regard to openly discussing the issue of death and dying. Before the legislation was passed, doctors were fearful of discussing with their patients the whole issue of death and dying. It was a taboo subject. For nine months the landscape changed. Doctors could openly discuss it. Once the legislation was overridden the communication doors were closed shut again.

Debate on the issue has now moved into coffee shops, restaurants, hospices and other places. Since the legislation, people in the Northern Territory are a great deal more comfortable talking about the issue, even if doctors are not. The "vulnerable people" or "slippery slope" argument is often advanced when dealing with voluntary euthanasia. The theory is that when voluntary euthanasia is legalised, individuals who are not necessarily suffering from pain but appear to have miserable, poor quality, meaningless lives may have their life terminated. They could include the very old, the severely mentally ill, and the severely disabled.

The other issue surrounding vulnerable people is that they may feel pressure, whether real or imagined, to request an early death. Pressure may be applied by a patients' relatives, acting upon various questionable motives. Also, some individuals may feel they are a burden on their families and friends and ask for assistance to achieve voluntary euthanasia to ease the burden. The safeguards contained in my proposal would protect against this. The problem at present is lack of regulation. Voluntary euthanasia goes on behind closed doors, illegally. There is no supervision, standards or rules. Compassionate doctors who cannot bear to see their patients suffer oblige by administering drugs that intentionally speed up the death of terminally ill patients who are suffering. In doing so they run the risk of being charged with murder for intentionally hastening the death of their patients. The proposed legislation seeks to regulate a previously unregulated area to ensure that there are adequate legal safeguards. Patients will gain greater protection, not less.

An essential component of the legislation is voluntary patient consent. A patient who has a terminal illness and is suffering can request their doctor to assist them to terminate their life. No-one else can make the request. The process can only be initiated by the patient with the agreement of their doctor. Relatives and friends are prohibited from interfering in the process. Consent and voluntariness has to be raised by the first doctor, pursuant to clause 7 (1) (j), and verified by a second doctor, pursuant to clause 7 (1) (m). The legislation specifies that the medical practitioner must be:

> … satisfied, on reasonable grounds, that the patient is of sound mind and that the patient's decision to end his or her life has been made freely, voluntarily and after due consideration.

Terminal illness is defined in clause 3 as:

> … an illness which, in reasonable medical judgment will, in the normal course, without the application of extraordinary measures or of treatment unacceptable to the patient, result in the death of the patient.

As can be seen from this definition, physical and mental disability are not grounds for requesting termination. Physically disabled people must also be suffering from a terminal illness before they can access the legislation.

Those with a mental illness or who are not competent are automatically excluded from using the legislation. Indeed, the safeguards are so stringent that it would be virtually impossible for a person to be

involuntarily euthanased or for someone to request euthanasia and comply with all the procedures if they did not really want to proceed. Safeguards can always be added if a loophole in the law is found to exist. In the Northern Territory, where identical legislation operated for nine months in 1996 and 1997, there was never any criticism that the safeguards were not strong enough or that the legislation was being abused or misused. During that time only four people used the legislation. Similarly, experience in Oregon over three years disproves the claim that vulnerable people are at risk.

Another argument that is often advanced is that legalising voluntary euthanasia will lead to cost cutting and neglect of palliative care facilities, special care and treatments for the elderly, chronically or terminally ill and disabled people. Interestingly, the reverse has occurred in the Northern Territory and Oregon. The public debate on voluntary euthanasia in both places has focused attention on palliative care, resulting in more resources being directed to it.

As I said, the Greens support palliative care. We support extra funding for palliative care and welcome new initiatives in this area. We do not support cost cutting and neglect. However, we do believe that the best palliative care and voluntary euthanasia are totally compatible and can operate alongside each other. It is not our intention that voluntary euthanasia should in any way, shape or form diminish or lead to a reduction in palliative care services. Voluntary euthanasia should be available when palliative care simply does not work or works in a way that is unacceptable to the patient, for instance through pharmacological oblivion.

Voluntary euthanasia legislation is long overdue in New South Wales. It is supported by the majority of Australians. It is time that this common practice, which occurs in secret behind closed doors, is properly regulated. This bill will help those who are suffering, in agony and desperate to bring their suffering to an end. It is about alleviating individual human suffering. Those individuals have no-one to turn to under the current legal regime. Instead, sympathetic members of the medical profession or family, friends and loved ones put themselves at incredible risk to help them end their lives. This is an act of love and compassion of the highest order. If prosecuted, the helpers could be found guilty of murder. All they want to do is help their loved ones to end their intolerable suffering. It would be much better to legalise this practice so that death can be humane and dignified and so that caring and compassionate individuals do not face the threat of legal sanction.

This bill does not ask anyone to compromise his or her religious, personal or ethical beliefs. Those who oppose the legislation have no obligation to use it, but others should be allowed that basic freedom in our democracy. The bill will not, and cannot, lead to a slippery slope, as some argue. To those who argue it can, I say that they simply have not read the bill. The safeguards are so stringent that they rule out the possibility of the legislation being used on vulnerable or inappropriate individuals. I respect those who, for religious or personal reasons, oppose voluntary euthanasia, but I ask them not to impose their views and beliefs on others.

They have the right to their beliefs and choices, but others should have the right to their beliefs and choices. I ask members to support the bill so that those who wish to are allowed to exercise this right. To deny the right to access voluntary euthanasia because of religious or personal choice is to deny freedom of choice. The bill contains iron-clad safeguards so that only suffering, terminally ill patients with a strong desire who are significantly motivated to endure the rigorous process set out in the bill will be able to use them to terminate their lives. This is their right and their choice.

I shall give a brief explanation of the clauses in the bill. Clause 4 allows a patient in the course of a terminal illness who is experiencing pain, suffering or distress to an unacceptable extent to request that his or her medical practitioner assist the patient to terminate his or her life. Clause 3 deals with definitions. The clause defines key terms in the legislation. The definition of "assist" includes the possibility of the doctor administering a substance. "Health care provider" includes both institution and care-giving staff. The definition of "medical practitioner" has the effect of limiting the practitioner, and hence the power to assist, to resident doctors of New South Wales only. "Terminal illness" is defined as an illness that in reasonable medical judgment will, in the normal course, without the application of extraordinary measures or of treatment unacceptable to the patient, result in the death of the patient.

Clause 5 allows a doctor to agree to a request if all of the conditions set out in clause 7 are met. Clause 6 makes it an offence to try to coerce a doctor into helping a patient to end his or her life or for anyone to prevent or threaten a doctor or anyone else for doing so or for proposing to do anything that is authorised under the Act. Clause 7 sets out all the conditions and safeguards that must be met before a medical practitioner can assist. Clause 7 (1) (a) provides that the patient must be 18 years of age or over. Clause 7 (1) (b) (i) provides that the patient must have a terminal illness. Clause 7 (1) (f) provides that the terminal illness must be causing the

patient severe pain or suffering. Clause 7 (1) (g) provides that the patient must be informed by a medical practitioner of the nature of the illness, the diagnosis, the likely course of the illness, the prognosis, and the medical treatment available, including palliative care, counselling and psychiatric support.

Clause 7 (1) (b) (ii) and (iii) further provides that the treatment available to the patient will only relieve his or her pain or suffering and is acceptable to the patient. Clause 7 (1) (i) provides that the patient must consider the possible effect of his or her decision on his or her spouse or family. Clause 7 (1) (c) (i) and (d) provides that a second medical practitioner with special qualifications relating to the terminal illness of the patient must examine the patient and confirm to the patient's doctor and the patient that he or she agrees with the diagnosis and prognosis. Clause 7 (1) (c) (ii) and (e) provides that a third medical practitioner who is a psychiatrist must examine the patient to ensure that he or she is not suffering from a treatable clinical depression. Clause 7 (1) (g) and 7 (3) provide that information about palliative care options must be given to the patient by a doctor with special qualifications in palliative care. Clause 7 (1) (n) and 7 (4) provide that an interpreter must be used if any of the doctors does not share the patient's first language, particularly when the certificate of request is signed. Clause 7 (1) (h) provides that, having obtained the second medical opinion and psychiatric opinion, and having considered the palliative care, counselling and psychiatric support options, the patient must confirm to the doctor that he or she still wants assistance.

Clause 7 (1) (k), (l), (m) and (n) further provides that the patient must then wait at least seven days before signing a request form, which must also be signed in the presence of his or her medical practitioner, a second doctor and an interpreter if required. Importantly, clause 7 (1) (j) specifies that the medical practitioner must be satisfied on reasonable grounds that the patient is of sound mind and that his or her decision to end his or her life has been made freely, voluntarily and after due consideration. Clause 7 (1) (p) provides that the patient must then wait at least 48 hours before the medical assistance can be provided.

Clause 7 (1) (o) specifies that the medical practitioner must have no reason to believe that he or she, the countersigning medical practitioner, or a close relative or associate of either of them will gain a financial or other advantage as a result of the patient's death. Clause 7 (1) (q) provides that the doctor must not proceed with the assistance if at any stage the patient indicates that he or she no longer wants to end his or her life. Clause 6 (1) provides that any person who attempts to influence a doctor to assist or not assist a patient to end his or her life can be fined $11,000, and clause 11 (1) provides that any person who improperly causes another person to sign or witness a request form may be fined $22,000 or imprisoned for four years. Clause 8 specifies that a doctor must not assist a patient if there are palliative care options reasonably available to the patient to alleviate the patient's pain, suffering and distress to levels acceptable to the patient.

These conditions and safeguards are so strict and stringent that it will be difficult for individuals to use the legislation. People will have to be strongly motivated to jump through all the hoops placed in the way before they can use the legislation. Clause 9 provides that if a patient is unable to sign the certificate he or she may request that another person sign it on his or her behalf. This person cannot be the first doctor or the second doctor who examined the patient and confirmed the first doctor's opinion or a person who is likely to receive a financial benefit if the patient dies. This person must sign the request form in the patient's presence and in the presence of the other witnesses as required by the legislation.

Clause 10 specifies that a patient can change his or her mind regarding ending his or her life at any time. In this situation the request is no longer valid and the patient's doctor must destroy the certificate. Clause 11 makes it an offence to deceive or coerce anyone into signing the certificate. A person who offends against this provision cannot receive a financial benefit as a result of the death of a patient. Clause 12 provides that the doctor must note full details concerning the patient's request on his or her medical records, and confirm that all requirements of the Act have been met. Clauses 13 and 14 provide that following the patient's death a copy of his or her request, together with the death certificate, shall be sent to the Coroner. The death is not to be treated as unusual by virtue of the fact that the patient sought assistance.

In such circumstances the Coroner will not be compelled to hold an inquest into the death; neither will the Coroner be prevented from holding an inquest if there are other indications requiring it. Clause 14 requires relevant statistics to be tabled in each House of Parliament every year. Clause 15 allows the Coroner to report on any aspect of the operation of the Act. Clause 16 provides that doctors or health care providers are not criminally liable if they act in accordance with the legislation. Clause 17 deals with evidentiary issues, and clause 18 deals with wills and contracts. Clause 19 deals with insurance and annuity policies. Clause 20 provides that a person acting in good faith according to the Act is immune from criminal prosecution or any form of professional disciplinary action or censure. Clause 21 deals with regulations, and clause 22 specifies the nature of proceedings for offences.

I have detailed the clauses in the bill to make it clear to honourable members that the issues have been set out clearly in the legislation. The bill has the support of a number of campaigners for euthanasia and some of

Australia's top medical professionals. All areas have been covered. Indeed, one criticism of the bill is that it creates too many hoops to go through for someone with a terminal condition. Essentially, the bill is a conservative bill. It allows euthanasia to take place only after many processes. The simple fact is that up to 80 per cent of the Australian community are clearly saying that they want the right to choose voluntary euthanasia if the situation presents itself at end of life.

Clearly, many people suffer greatly at end of life. If people in the community do not believe in euthanasia, there is no active coercion for anyone with a religious conviction or any other conviction to go down the path to voluntary euthanasia. I have spoken with many people who have suffered while looking after loved ones for many years; they have told me that voluntary euthanasia was the desire of the dying person. That was the desire of Norma Hall during her final days, when she was suffering terrible pain, before she died. At a meeting in Tweed Heads, at which both Dr Philip Nitschke and I spoke, many people approached me and said, "I want the comfort of having medication on hand and acknowledgement that I can use it or my family or doctor can assist me to use it at the critical stage."

At present people who are suffering from a terminal illness, who are in great pain and distress and who are on the threshold between life and death, are forced to take their life often by rather barbaric means and in isolation without the support of their families because the legislation does not allow it. This bill is humane legislation. It is saying, "Give people the choice. Allow people to design the end of their life in a way they are comfortable with." Also, doctors should have the right to support these patients without fear of being sent to gaol, losing their livelihood and being incriminated in a most horrific crime, that is, murder. It is a basic tenet of a democratic system that we allow people, whether they are in the majority or in the minority, the right to end their life and their suffering as they see fit. I am sure members of the public would support this bill. Indeed, that has been proved time and again during a significant number of investigations.

Recently at John Hunter Hospital in Newcastle a statement was made by an overwhelming number of surgeons who admitted to having used voluntary and involuntary euthanasia in recent times. If this House keeps this issue under wraps, unofficial and unregulated, that will pose a great danger to the patient or the person who is dying and a great danger to medical practitioners who are moved by their philosophy of care to end the suffering of their patients. If this House moves to maintain that status quo, I believe that is an extremely inhumane position for this House to take.

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

TABLED DOCUMENTS STORAGE

The Hon. JOHN JOBLING [3.20 p.m.]: I move:

> That during the present Session and unless otherwise ordered, the Clerk is authorised to give into the custody of State Records documents tabled under Standing Order 18 and made public, 12 months after the tabling of those documents.

I have moved this motion because of a change in attitude by a number of honourable members in their calling for papers following disputation. Honourable members are more and more frequently using Standing Order 18 to call for the production of papers, to have documents tabled and to have documents brought before the House. That is all perfectly reasonable, but given the number of boxes that have to be stored in the Clerks offices and in various other places in the parliamentary complex—boxes of documents that are going nowhere—one has to ask how long is it proposed that we keep these boxes of documents and by what mechanisms do we propose to eventually get rid of them. They seem to be multiplying. I recall what happened when documents were tabled in relation to Sydney Water. Of the approximately 40 boxes of Sydney Water documents that were produced, most were quite innocuous. As I have mentioned in this House previously, some of the documents were nothing more than bills and opinions that were approximately 10 years old. Clearly there is no issue of secrecy attached to those documents.

Why should we want to keep such documents longer than a period of 12 months? In this day and age and in this technological world when a technical product comes into the commercial arena its technical integrity is protected under a patent, in which case there would be no secrecy about it. Alternatively, if the product is not patented, one may rest assured that the producer's commercial competitors will have bought the product, will know the product's technological innovations, and will understand its workings. A counterargument that is sometimes advanced is that the documents may contain recommendations and references to tenders. It should be remembered that by the time the tender documents reach this Parliament, the result of the tender has probably been known for between one to five years. Taking into account also that the documents will be in the custody of

the Legislative Council for a year, there is no issue of commercial confidentiality. In most other countries, after a tender has been awarded the unsuccessful bids are made public under what is known as a transparency of tendering procedure.

By the time a tender is received by this Parliament, the tender and any technology referred to would no longer be under the constraints of commercial confidentiality or secrecy. The basic purport of the motion is that storage of the documents will take place only after they have been held by the Legislative Council for more than 12 months to allow for a reasonable effluxion of time having regard to the need for secrecy and/or the protection of interests. The example of the Sydney Water documents to which I have already referred illustrates my point. Nevertheless, the documents need to go somewhere and a place of storage needs to be determined. For that reason I have included in the motion a provision that, after the expiration of the 12-month period of retention of the documents by this Parliament, the Clerk will be authorised to give those documents into the custody of State Records New South Wales. In other words, those documents will be preserved for use by historians and people who in years to come wish to examine the manner in which events transpired. Those documents will be kept in a State Records New South Wales facility, which is one of two places—the other one being State Archives—where it is appropriate to store such documents.

The House needs to resolve the situation because this dilemma has gone on for too long. I hope that honourable members appreciate that the documents will be removed to storage only after 12 months has elapsed following their receipt. After that, the documents will be dispatched to State Records New South Wales to be retained in perpetuity. If the motion is agreed to, at least the Parliament will be able to clean out a large number of document boxes. I doubt whether, over the past 12 months, many people would have sought access to documents that have been retained by the Parliament for more than four years. The proposal that is the subject of the motion seems to me to be a very sensible way of dealing with these documents. I commend the motion to the House.

The Hon. JAN BURNSWOODS [3.25 p.m.]: I wish to express a number of concerns about this motion. I do so primarily as the parliamentary representative on the Board of State Records New South Wales. One of the unfortunate aspects of this motion is that State Records New South Wales was not consulted about it. While I have the greatest respect for the reasons for the motion stated by the Hon. John Jobling, I believe that the motion will have a great number of implications, all of which have been the subject of discussion over a considerable period relating to the records of the Parliament and how they should be handled. The motion therefore has a number of implications for the Parliament and it has a number of very grave implications for State Records New South Wales. Perhaps the easiest way for me to make the points that need to be made is for me to read portions of a letter that was sent to me on 18 September by David Roberts, the Director of State Records New South Wales.

When I became aware of the inclusion of this motion on the business paper, I wrote to Mr Roberts and asked him for his opinion. Because I have had a long-term involvement with State Records New South Wales, or State Archives as it used to be termed, over 20 years and because I am the parliamentary representative on the Board of State Records New South Wales, obviously I wanted to express my concerns and find out the official position adopted by State Records New South Wales to this motion. I inform the House that on 26 September Mr Roberts sent a copy of his letter to the Clerk of the House and in that letter referred to discussions that had taken place in the past. The first point it is important to make is that negotiations have been taking place between the New South Wales Parliament and State Records New South Wales through the Clerks since 1999 concerning the appropriate applications of provisions of the State Records Act 1998 to the Houses of Parliament. Only part of that Act actually applies automatically to the Parliament, and that part is the one concerning the protection of State records.

Many other provisions in the essentially totally rewritten and reorganised 1998 Act relate to matters such as records management, responsibilities, State records that are no longer in use and public access which can apply to the Parliament but which, by agreement, do not apply automatically. Similar provisions apply to numerous other institutions in New South Wales. I have been informed that those negotiations have reached a stage that is so advanced that a draft memorandum of understanding has been developed by the staff of the Parliament and by State Records New South Wales. The draft memorandum was certainly with the Clerks in September when David Roberts sent me his letter. David Roberts goes on to say, as I think we would all agree, that tabled documents of the kind that the Hon. John Jobling has referred to represent a significant records management problem for the Parliament. I understand that the Clerk of the Parliaments, John Evans, has specifically referred to that problem.

The difficulty with this motion is that it deals with only one small part of the records issue relating to the Parliament. From the point of view of the State Records Authority it is problematic in a number of ways. By

definition, all these records are copies, and, presumably, generally photocopies. The State Records Authority has developed, over several decades, a system of appraisal reports, disposal schedules, and so on. In other words, every government, semi-government and private institution that enters into arrangements with the State Records Authority does so only after the formulation of considerable reports and compliance with an extremely comprehensive series of rules relating to retention and disposal, which are designed to apply for perpetuity.

Following the last meeting of the State Records Authority, appraisal reports of the kind I have referred to were produced. The first of those reports related to the Roads and Traffic Authority and dealt with 213 shelf metres of records dating back to 1989. It referred to matters such as "Retain a minimum of seven years after action completed, then destroy". That was a very small report because it related to a limited number of documents. A brand new retention and disposal authority has been formulated for the new Department of Ageing, Disability and Home Care. It is a much more comprehensive document, comprising pages and pages of rules relating to whether records shall be kept permanently, whether they will be retained for a minimum of 75 years, for example, and so on.

The point I am seeking to make is that the State Records Authority as an agency has a number of responsibilities under its legislation, but it also has some freedom. These negotiations have been going on so that a memorandum of understanding can be developed between both Houses of Parliament and the State Records Authority. Whilst I fully understand the Hon. John Jobling's concern relating to the large number of boxes of documents that have accumulated here in the Parliament, a storage problem is not a reason to ignore the processes discussed during two years of negotiations or to breach the longstanding policies of the State Records Authority.

I believe that the motion is too restrictive, it has been moved too early, and it fails to take into account all the steps involved. The State Records Authority cannot simply be given boxes of records. The authority is responsible for the storage of State archives, current records, semi-current records, and all kinds of categories of records. There are also fees for holding records. A whole variety of factors must be taken into account. However, the principal matter to be addressed is the formulation of a policy of retention and disposal.

Members who have seen the State Records Authority repository at Kingswood will know that it is well on the way to becoming the largest building in the Southern Hemisphere. Amongst the many issues we are debating, the expenditure of millions of dollars on the need to retain the large number of records in the repository at Kingswood and a small number at The Rocks is of concern. However, this can be done—obviously it is done for critically important records—but it must be done in a systematic way. Except for the most valuable early colonial records, almost never are records retained for the purpose of photocopying. All the documents that the Hon. John Jobling refers to in his motion are already subject to the rules and retention and disposal policies of the State Records Authority; indeed, all of them are already State documents.

The motion, as it relates to the policies of the State Records Authority and the provisions of the Act, is incredibly unusual because it relates to records that are covered in other ways, both by the legislation and, in these discretionary areas, by the memorandum of understanding, which, as far as I am aware, is still with the Clerks for comment. I think there has been some breakdown of the Parliament's management procedures; it has taken so long for the matter to make little progress. I hope that the Hon. John Jobling can suggest different ways to address the matter. Perhaps the Clerks could provide a report on the progress they have made. However, to act on one minute issue amongst all the issues involved, after two years of negotiations between the Clerks and the State Records Authority, is not a wise way to proceed. There are other ways of dealing with these records but, more importantly, there are more effective and more comradely ways of dealing with the State Records Authority.

I understand that parliamentary staff have begun the task of appraising the records of the Parliament and drafting the kind of records retention and disposal authority I have spoken about. Obviously, if it is thought necessary, that task should apply to those records as well as to the real records of the Parliament. Part of the problem with the records we are speaking about is that most of them are already subject to a records retention and disposal authority in the agency in which the records originated.

The draft memorandum of understanding also provides for the Parliament to transfer to the custody of the State Records Authority any of its records that are to be kept as State archives but which the Parliament does not wish to retain in its custody. That would enable all the records of the Parliament to be appraised systematically and coherently, and would produce the kind of comprehensive retentions and disposal authority I have referred to. Of course, the Parliament will be able to decide which of the records sought to be kept as State

archives will be transferred to the custody of the State Records Authority. Simply because a record is to be retained does not mean it must to be transferred to the custody of the State Records Authority. I should like to conclude this portion of my remarks by quoting a portion of the letter written to me by David Roberts, the Director of the State Records Authority, which sums up much of what I have said. Mr Roberts wrote:

> In the light of these developments, I would consider the motion on notice to be premature. The records that it covers should be appraised in conjunction with the other records of the Parliament and their status as State archives or not should be definitively determined before the State commits itself to preserving them in perpetuity.
>
> As you note, the motion does not address a range of other issues that would affect the management and use of the records in State Records' custody. These issues are dealt with in the draft memorandum of understanding. My view is that the memorandum of understanding should be concluded before any records of the Parliament are transferred to State Records' custody as State archives.

I understand that that was the status of the negotiations as at September, when I became aware of the Hon. John Jobling's motion. I am not sure whether there is a temporary solution to the problems that have been identified. We have all seen large numbers of boxes in the various corridors and offices proximate to the Legislative Council Chamber. I gather that the present rules make it very difficult to get rid of them. Basically, they are here, they are in the custody of the Clerks, and that is the end of the matter.

There are much more sensible ways to deal with what is essentially the storage of photocopied documents that have been sought to be tabled because of a particular incident at a particular time. The Hon. John Jobling very sensibly drew attention to records, for example, of Sydney Water, which are up to 10 years old. They were never secret in the first place and certainly are not secret now. I stress that the records are all copies and are only here perhaps because of ephemeral needs. This problem needs to be addressed. But I urge the House not to address a short-term problem that has perhaps arisen from our own standing orders and procedures and has grown recently because of a fad or habit of members to ask that lots of records be tabled. There are other standing orders by which members can obtain records. We might want to look at our procedures in relation to the use of Standing Order 18.

It would not be difficult to come up with a means by which these photocopies, or portions of them, could be destroyed after a certain period. Finally, this motion seeks to impose on the State Records Authority an onerous and very expensive provision which, from the point of view of State Records, is not only unnecessary but in many ways quite unwise. The Hon. John Jobling finished his remarks and said that these things would be safely secured at State Records for historians and would have a new home in perpetuity. The problem is that these are not original documents but they are subject to very carefully thought out retention and disposal schedules in their originating departments. Those originating departments do not have carte blanche to make up rules that they like. Most of the schedules are drawn up very carefully by professional archivists. Many State Records manuals and procedures are models not only for Australia but internationally. State Records now makes a considerable income from demand both in Australia and overseas for things such as its keyword Thesaurus and manuals.

In conclusion, the motion seeks to address what is fundamentally a storage problem for the Clerks, particularly for the Clerk of the Legislative Council, as the Hon. John Jobling said. Boxes of this kind could be more cheaply stored in commercial storage than at the State Records Authority. Records cannot simply be transferred to the State Records Authority without provision being made for quite onerous and labour-intensive and, therefore, cost-intensive procedures in relation to appraisal. It seems that this motion uses a very large sledgehammer to crack what is, in fact, a very small nut. The Director of State Records said that the Act was passed in 1998, ongoing negotiations have occurred since 1999 with the Clerks of both Houses of this Parliament, a draft memorandum of understanding is in existence, and they all deal with the records of both Houses.

It seems clear to me that it would be, at best, premature to carry this motion and, at worst, expensive. The motion, if carried, would create unnecessary labour problems because of the total lack of detail and procedure on how we or State Records would retrieve these records in their current form. I urge the House not to carry this motion. It may well be sensible to adjourn debate on the motion to obtain more information from the Clerks about the progress of negotiations on the memorandum of understanding with State Records and both Houses of Parliament. If this motion is carried we would look foolish and the State Records Authority would have a serious problem both philosophically and in terms of resources.

The Hon. RON DYER [3.45 p.m.]: I have listened with close attention and a great deal of interest to the Hon. John Jobling, who spoke in support of his motion, and with equal care and attention to the Hon. Jan Burnswoods, who spoke about the role or the possible future role of State Records if the motion were carried. In essence, my solution to the problem—and there clearly is a problem as identified by the Hon. John Jobling—

The Hon. Dr Brian Pezzutti: Burn them.

The Hon. RON DYER: The Hon. Dr Brian Pezzutti flippantly says, "Burn them." I certainly would not lend myself to such an irresponsible suggestion. However, the simple solution can be expressed in three words: "Return to sender". At the end of litigation proceedings a judge disposes of the proceedings and makes various orders in relation to costs and any other relevant orders, and finally says, "Exhibits may be returned." In other words, exhibits tendered to the court during the hearing of the litigation are to be returned to the parties. I can well appreciate that the Clerk has an increasing problem with accumulation of records. I would not like the Clerk to face the problem of not having room to swing a cat, as the saying goes. That being the case, a solution has to be found.

As the Hon. John Jobling suggests in his motion, it is clearly reasonable for the records to be retained for 12 months, during which time honourable members can continue to access the documents. However, after that period something else must be done with the voluminous documents that are continually being requisitioned, so to speak, by motions carried in this House, usually at the behest of the crossbench or the Opposition. There are difficulties in relation to the established procedures of State Records. It seems to me that when records are produced to the House by the Roads and Traffic Authority or Sydney Water, or by any other government agency or department, a sensible solution would be to send the records back to that agency. I must confess that I have not really had a great deal of time to formulate a precise amendment. However, in order to seek to give effect to the sentiments I am expressing—

The Hon. Dr Brian Pezzutti: How can the honourable member concentrate on his speech if he is being interrupted by his colleague all the time? He is a remarkable man to be able to keep his concentration.

The Hon. RON DYER: I would have thought that the Hon. Dr Brian Pezzutti would have been the last member in this House to complain about me being interrupted by interjections. Historically, the Hon. Dr Brian Pezzutti would be the worst offender in that regard.

The Hon. Dr Brian Pezzutti: Not the very worst.

The Hon. RON DYER: The very worst offender, particularly so far as I am concerned.

The Hon. Dr Brian Pezzutti: Because you deserved it.

The Hon. RON DYER: I think I deserve far better. One of the things that I will miss when I leave this House will be the invariably pertinent, intelligent, witty interjections of the Hon. Dr Brian Pezzutti. Perhaps he should think about that. Having regard to what I said earlier about what I believe to be a sensible solution of returning papers to the sender—the department or agency from whence they are requisitioned—I move:

> That the question be amended by omitting the words "give into the custody of State Records" and inserting instead "return to the Premier's Department".

That seems to me, in a practical sense, to solve this admittedly growing problem.

The Hon. JOHN JOBLING [3.51 p.m.], in reply: I note and appreciate the comments made earlier by the Hon. Jan Burnswoods relating to State Records. I have taken advice in relation to this issue. I am equally aware of the discussions that have been held by the Clerks and State Records officers. Questions were asked earlier about the archiving and keeping of records—problems which, in my view, are not insurmountable. History must be available for public inspection as historians are always interested in our past. Opposition members agree that this principle should ultimately apply in relation to both Houses of Parliament. At the moment, it applies only to the Legislative Council. We will solve our problem and let the Legislative Assembly solve its problem if it wishes to do so.

Reference was made also to parliamentary records, which is a separate problem. We are dealing principally with those records that are covered by Standing Order 18—records that have been acquired and examined. A memorandum of understanding might not be required. This notice has been on the notice paper since September 2000 and we are now in the year 2001. I accept the spirit in which honourable members contributed to debate on this issue. I listened carefully to the amendment that was moved earlier by the Hon. Ron Dyer. It appears to me to be a perfectly acceptable amendment which will resolve the problem with which we are confronted. The Opposition is happy to concur with the proposed change to the motion to omit the words "give into the custody of State Records" and insert instead "return to the Premier's Department". The motion would then read:

That during the present session and unless otherwise ordered, the Clerk is authorised to return to the Premier's Department documents tabled under Standing Order 18 and made public, 12 months after the tabling of those documents.

If documents are to be returned to the Premier's Department the problem will be solved. The Opposition is happy to accept that amendment.

Amendment agreed to.

Motion as amended agreed to.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders

Motion by the Hon. John Della Bosca agreed to:

That standing and sessional orders be suspended to allow the moving of a motion forthwith relating to the conduct of the business of the House.

Precedence of Business

Motion by the Hon. John Della Bosca agreed to:

That, notwithstanding the order of the House of Wednesday 28 November 2001, Government Business take precedence of General Business forthwith.

COMPANION ANIMAL REGISTER

Return to Order

The Clerk, in accordance with the resolution of the House of Wednesday 14 November 2001, tabled a return showing companion animals by local government area received this day from the Director-General of the Premier's Department and referred to in paragraph (1) of the resolution.

WORKERS COMPENSATION LEGISLATION FURTHER AMENDMENT BILL

Second Reading

Debate resumed from 28 November.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [3.56 p.m.]: This bill represents the outstanding aspects of the second tranche of reform with the remaining component, scheme design, yet to be presented. I believe it is fair to say that this bill is anything but perfect. However, the Government has put forward its grounds for reforms and it is the position of the Opposition not to oppose those reforms. I feel it is also worthy of note that there exists some confusion, or indeed disagreement, with the Government on its desired outcomes, with some of that divergence coming from those employed by the Government to test these objectives.

The reforms in this bill are the direct result of the Sheahan inquiry, which was initially constituted to look at common law but which went further. The end result is this bill, which also addresses reforms to the statutory scheme, private underwriting and commutations. We are told that reforms are needed following years of significant decline in the effectiveness of the scheme. Neglect during a six-year period has resulted in the scheme now having an unfunded liability of at least $3 billion—a figure that is growing by a staggering $3 million per day—and continuing neglect has resulted in at least 50 per cent of businesses in this State unwittingly being hit with massive increases in premiums this year alone.

Going on evidence that was given to General Purpose Standing Committee No. 1, that neglect is probably best described as a period of missed opportunity. History, unfortunately, will never record it, but when we on this side of the Chamber raised the spectre of an upper House inquiry into workers compensation last year, we finally provided the much-needed catalyst that moved the Minister for Industrial Relations to act. We all remember the panic as the Minister cobbled together the first tranche of reforms with their promised $150 million savings. Yet we are also aware of the Minister's personal disappointment in the lack of results that those reforms failed to achieve.

Earlier this year honourable members will remember what is colloquially known as the second tranche of reform mark one—a bill that has gone through widespread consultation in the Minister's office, but that has had little consultation anywhere else. Promises that the scheme would save $350 million per year were widespread, both in and outside this place, but when asked to produce complete actuarial costings, the Government was mute. When the bill finally hit the deck in this place it was painfully obvious to all that the Minister for Industrial Relations had put together a package that was doomed to fail. As a matter of fact, it was so bad he has, to this very day, refused to expunge it from the business paper. If we look at today's business paper we see that it is item No. 10 of Government business. The Minister is eagerly awaiting the proroguing of the House for the Governor's opening in February when this bill will simply vanish into the ether.

Following Mark I, the Minister announced the birth of Mark II. The lessons of the earlier legislation had been lost on the Minister, as this delivery developed complications, best described as internal problems. Who will ever forget the way the so-called voice of workers, the left-wing of the Australian Labor Party, went along for the ride, because, as we all saw, their seats in this place were worth more to them than the rights of their brother workers. How many of them have attacked workers in the past for crossing a picket, irrespective of the workers' need for their jobs to keep a roof over their heads or to feed their families. But when it was their turn, they skulked in through secret passages, like rats travelling in line through a sewer. We on this side will never forget their commitment to workers when we see their crocodile tears in the future.

Another great advocate for workers was the now Minister for Police, who recognised quickly the shock retirement announcement by the Hon. John Johnson for what it was, and he too found a rock to crawl under, leaving John Robertson to carry the can. What a disappointment he was and will continue to be on this issue. Nowhere in Sydney are people shaking their heads more than in the offices of the Police Association. He can make all the promises he likes about looking after the cops, crushing gangs, et cetera, but they have heard it all before. The Minister would not be here without the support he has enjoyed from the unions and their members, and the first time he was seriously asked to stand up for them, he walked away. The Minister for Industrial Relations is a great advocate for history. He might remind the Minister for Police, as Ronald Reagan used to say, "You always dance with the one who brought you".

In 1997 this State Labor Government initiated an independent, comprehensive review of the workers compensation scheme, the Grellman inquiry, which sought submissions from stakeholders and considered possible areas for change before delivering a blueprint for reform. Who will forget the Premier and the then Minister for Industrial Relations, Jeff Shaw, as they held the reforms aloft like some holy scripture, only to throw it into the dustbin some three years later. The political dustbin is the final resting place of the Grellman inquiry. Critics, including the present Minister for Industrial Relations, argue that some of the reforms instituted by then Minister Shaw had failed to achieve results, even though it was hardly in operation for three years. The Government has been in office for almost seven years and it has been incapable of achieving its promised results. Perhaps the time is fast approaching when the Government will go the way of the Grellman report.

Irrespective of Government attempts to wipe from the record any of the Grellman initiatives, the core deficiency in the State's workers compensation scheme remains. Honourable members may be aware that last week General Purpose Standing Committee No. 1 held two days of public hearings to hear from representatives of insurers, actuaries, risk managers and even Richard Grellman himself. The common issue of concern raised time and again was the question of scheme ownership. So too was the issue of commutation, and there are numerous admissions in the transcript of those hearings that abolition of commutation will not necessarily translate to improved scheme performance.

In fact, ample evidence is available that between 1991 and 1995, when commutations were not present in the scheme, the scheme commenced its downturn. It is really only since 1995 that the scheme has speeded up its deterioration, and the Government's reintroduction of commutation in 1998 locked it into a reform process that it now tries to tell us has failed. It is difficult to believe the protestations that we hear from the Government on the benefits or otherwise of commutations. It is only when one goes to committee hearings and hears from people outside the political process, on both sides, whether they are representing workers, employers or insurers, that one gets a greater opportunity to consider the potential for workers compensation. The responsibility for the neglect of the scheme rests with this Government for its inability to manage the commutation process properly.

We were told that the financial crisis in the scheme necessitated significant reforms, yet evidence was presented to General Purpose Standing Committee No. 1 last week that there was no real urgency and that the scheme was manageable. But without doubt the issue of stabilising the deficit in the scheme and then reversing the finances is crucial. The Minister earlier presented two packages of reforms that have had little effect on the tail. Businesses are hurting and therefore so too is employment in the State. We are, and have always been, prepared to support any reforms that we trust will bring down premiums.

All we have ever asked for, as we did during the second tranche of reforms, was transparency and accountability to Parliament—nothing more, nothing less. We did not seek to change the bottom line with regard to the legislation, and the Minister knows that. He continues to refer to opposition to reform, and he does so knowing that the Opposition's position was one of frustration at the inability of this Government, this Minister and his administration to accept parliamentary scrutiny of reform. That was all we asked for then and that is what we will continue to ask for, especially as the committee continues its work.

It is fair to say that the patience and trust of this House and of the wider community with the Government's never-ending promises that things are improving in workers compensation are starting to run a bit thin when we find ourselves confronted time and again with further deterioration. In 1999 we heard that the tail had slipped to $1.65 billion. However, the 1998 reforms were designed to arrest the decline. By December 2000 the debt had nosedived further, to $2.18 billion, thus forcing the Minister to commence his package of reforms to avoid Parliament, in the form of a committee, moving in and operating as an administrator. By June this year the scheme had blown out further, to $2.76 billion—an increase of $577 million in just six months. From this we learned it was continuing to climb at $3 million per day.

We assumed that reforms to abolish or limit common law were needed. We heard recently, in evidence given by the Director-General of WorkCover, Ms Kate McKenzie, to General Purpose Standing Committee No. 1, that the commutation reforms of the Government in the 1998 package had failed. Where can we look for some level of surety of what is likely to occur once these reforms are instituted to bring this unacceptable situation to a halt? Who better than the man entrusted with calculating the financial savings to be achieved as a result of these reforms, Mr David Finnis of Tillinghast-Towers Perrin. This is the man one would expect to have access to all the figures. He would know where the bodies are buried and would be in a position to forecast, using accepted actuarial methodology, the impact of the reforms and what we can expect to see in the future.

Mr Finnis told the committee that by December—next week—the deficit would have ballooned to $3.1 billion, and if the current trend continues it will reach $5.5 billion by June 2006. Of course, the Government assures us that this will not happen, because these reforms will fix it. It has called on Mr Fixit to turn the ship around, to get his hands on the wheel. But there is a growing level of concern that the Minister did not finish his navigation course and we are heading towards the reef.

Mr Tess of PricewaterhouseCoopers, an actuary of that former government organisation and someone who we would expect has his finger well and truly on the pulse, made the chilling admission that, whatever we do today, it will be some years into the future before we will witness the benefits of any reforms. Mr Tess said it will be five years, that is, 2006, before we will see the benefits of the changes to the scheme. But by 2006 the unfunded liability of the New South Wales scheme will be $5.5 billion. There is absolutely nothing that the Government can do to prevent that.

Perhaps it would be more prudent and fairer on businesses and the workers of this State if the Minister came clean and told this Chamber exactly what he is preparing for in 2003; and, if he is still Minister beyond 2003, what this Parliament will be confronted with in 2005 and 2006. I must warn honourable members not to be misled by reports in the not too distant future that the scheme is showing marked signs of revival based on changes to commutation provisions. I predict a short-term reversal based on the number of workers who have sought early settlement of their matters before the introduction of this bill. That short-term benefit will result from the expedited resolutions that are taking place in the marketplace at the moment. After those matters are processed, we will revert to the present position.

We were told that the common law provisions of the bill will deliver significant savings. The Minister has long held the view that common law changes are the way to go and that the savings from those changes will be significant. Evidence given to General Purpose Standing Committee No. 1 last week by the scheme actuary, Mr Finnis, supported by others who gave evidence, put the savings at somewhere around $100 million. Mr Finnis, the Government's own actuary who did calculations on where the Government is going, went on to make this frightening comment about the common law changes:

> Focusing on those changes alone, it would be difficult to see how they could have a significant effect on the deficit within a short period of time.

The Minister nods his head. Again I challenge the Minister to accept the comments of Mr Tess of PricewaterhouseCoopers that, whatever we do today, it will be four years before the benefits will be experienced in the scheme. I ask the Minister to accept the comment by Mr Tess that in 2006, five years from now, the scheme's unfunded liability will have ballooned to $5.5 billion. If we are to make tough reforms, we should be honest in respect of what we know is about to occur.

The Government's initial intention regarding common law was to have an impairment threshold of 25 per cent. The threshold was then reduced to 20 per cent, and by the time the bill had hit the decks it was down to 15 per cent. Mr Finnis said he had based his calculation on a threshold of 20 per cent. One can only assume that the further 5 per cent reduction in the impairment threshold will push back further the date by which the scheme can be returned to the black. Section 151 deals with how common law claims are to be subsequent to the 27 November reforms, including the impairment percentages to be reached before a claim can commence.

There is considerable concern over the impact of the impairment requirements for psychological and psychiatric matters. All members are fully aware of those concerns. I have spoken particularly with people concerned about the impact of this measure on emergency services personnel. I take this opportunity to recognise the presence in the President's Gallery of the President of the Police Association. He has shown a commitment to his members and he has taken the time to come to this Chamber and listen to the debate. He has been consistent in his approach to protecting his members—unlike the current Minister for Police. I am particularly concerned about emergency services personnel.

The Hon. John Della Bosca: They will be better off under my proposals—much better off!

The Hon. MICHAEL GALLACHER: The Special Minister of State says they will be much better off under this legislation. But there is a great deal of uncertainty about that. Might I say that we have heard it all before from not only the Special Minister of State but previous Ministers. Emergency services personnel are a special band of people, whether they are volunteers or paid employees. These people are prepared to put their lives on the line for us. When we are in the comfort of our homes of a night we know that emergency services personnel are out there protecting us, whether they are dealing with fires, violence, motor vehicle accident or other emergencies. They are always the first there and the last to leave.

It is only in the past couple of hours that I have had the opportunity to turn my mind to the detail of one amendment that I am considering. I flag it at this stage as a possible amendment to be moved in Committee if it is at all possible to do so within the constraints of the bill. I refer to the impact of maintaining common law provisions for emergency services personnel. As I have said, I am merely giving notice that, if it is possible, I will seek to exempt defined emergency services personnel from the common law provisions of the bill. During the next two days, before the Committee stage is reached, I will work to determine whether such an amendment can be put to this Chamber. It is a worthwhile objective.

This Chamber could show its respect and support for emergency services personnel and the work they do for this State by agreeing to such an amendment. We have been amazed at the bravery and commitment of emergency services workers in the United States of America during the past two months. I assure honourable members that New South Wales emergency services workers are no different and are deserving of the very best we can give them.

On commutation, the Opposition believes that the Government is throwing the baby out with the bathwater. Evidence given to General Purpose Standing Committee No. 1 last week by a number of witnesses reveals the positive potential of a much more tightly controlled scheme. I raised with Mr John Walsh, of PricewaterhouseCoopers, the possibility of allowing commutations for physical loss injuries, such as the loss of an eye or the loss of a limb. He agreed that that is possible, even though I too recognise the difficulty with that proposition. We should at least consider it further.

In his report, Justice Sheahan did not advocate the abolition of commutations. Nor do self-insurers support their abolition. They believe that these reforms will result in a 20 per cent hike in their premiums. This bill also rejects any proposal for private underwriting of workers compensation insurance. Honourable members would be aware that in 1996 the Grellman inquiry focused virtually completely on the ownership of the scheme. It was identified then as the biggest problem. I suppose it came as no shock to the Minister—it most certainly came as no shock to members of this House who have been debating workers compensation for much longer than the Minister has been a member of this place—that this problem has not gone away. Last week Mr Grellman said that the recommendations he made in 1997 are as current today as they were four years ago.

The NRMA Insurance group, the most recent entrant into the scheme, also believes that the abolition of commutations is a retrograde step. As I have said previously, the deterioration in the scheme can easily be sheeted back to years of neglect by this Government—neglect in rectifying the scheme's ownership, neglect in losing the opportunity to provide money for rehabilitation, and a clear refusal to accept the presence of significant fraud, in its myriad forms, in the scheme. The Opposition does not believe that private underwriting

is dead. That was evident from evidence given last week to the general purpose standing committee. I am still committed to at least exploring existing opportunities for private underwriting, as are a number of members of this Parliament.

A cynic would suggest that the Minister wants to get rid of the concept of private underwriting between now and the 2003 State election. He simply wants to manipulate the outcomes between now and the 2003 State election so that there are no witnesses, other than himself, and to ensure that a positive message is portrayed to the electorate. If the Minister is re-elected in 2003—I suggest that is highly unlikely, given the Government's current conduct—we can expect to see the reintroduction of private underwriting in some form, once the Minister has had an opportunity to divest himself of the responsibilities.

To put it simply, this is the Government's legislation. The Government has been pushing for these reforms and, as I said, the Opposition does not intend to oppose them. The Opposition believes that the second tranche of reforms provides mechanisms for this House to scrutinise and review, and to maintain its responsibility as a watchdog over the Government, although there is need for some further modification. As was indicated in the Legislative Assembly when this matter was first debated on 27 November, I intend to move an amendment in Committee to ensure that the review of the Act is completed by 31 December 2002 and that a report on the review is tabled before 27 February 2003. That will give us an opportunity to see exactly what is achieved in the next 18 months.

The Hon. Richard Jones: Eighteen months?

The Hon. MICHAEL GALLACHER: I apologise. It is not 18 months; it is 14 months. The Government cannot have it both ways. If the Government is seriously suggesting we will see some reforms in the scheme in the shorter term, we will expect to see evidence of that when the review is presented to the Parliament. Either Mr Finnis and Mr Tess have got it wrong and the deficit can be turned around quickly, or they have got it right and there is absolutely nothing that can be done to improve the unfunded liability for at least the next five years. I also intend to move an amendment to delete schedule 6, thereby retaining the possibility for private underwriting in New South Wales. I believe that Grellman got it right in his 1997 report, and that the Minister believes that Grellman got it right.

Last week Mr Grellman told the committee that he is still committed to private underwriting. We agree that now is perhaps not the time to introduce private underwriting. However, as the Government has had private underwriting on its books for a couple of years and has done nothing to introduce it, the Opposition does not believe that the Government needs to remove it now. If the Parliament determines that it is worth retaining private underwriting provisions in the bill, perhaps a reference can be made to General Purpose Standing Committee No. 1 to examine that matter in detail next year and report back to the Parliament on existing opportunities for a privately underwritten scheme.

At present the Government does not wish to take responsibility for the scheme, although it has complete and utter control of every aspect of it. Indeed, the reforms that have gone through in recent times, and the entire second tranche of reforms, give the Minister unprecedented control of the workers compensation scheme. So, for the Minister and the Government to say they do not have ownership of the scheme is a bit rich. If the Government is telling employers that there is a possibility that in the future it will initiate a debt reduction levy that they will have to pay, but at the same time the Parliament must entertain alternative mechanisms that enable the scheme to operate to ensure that competition plays a role in reducing premiums, perhaps private underwriting is the way to go.

The Opposition does not oppose the legislation. However, as I said, I intend to move a number of amendments in Committee. I reiterate that in the next 24 to 48 hours I will finalise an amendment that will, hopefully, address the concerns of emergency service workers in this State. The pressure will be on the Minister to see where his true allegiance lies. To put it simply, I expect to see that great advocate for workers, that great voice of the common man, the new Minister for Police, vote for the Opposition's amendments to ensure that the Parliament recognises the special role of emergency service workers in this State. We are prepared to put our money where our mouths are to ensure that those workers are protected.

The Hon. RICHARD JONES [4.28 p.m.]: The first part of the bill seeks to implement the recommendations relating to common law arising out of the Sheahan inquiry. Specifically, a threshold of 15 per cent for permanent impairment is required before common law damages can be pursued. That threshold is simply too high and will exclude many seriously injured workers. In addition, a successful common law claim

will mean that an injured worker will not be entitled to any more compensation. This will mean that a severely injured worker will probably not even have enough money to pay for his long-term medical care, let alone other expenses that will surely arise.

The threshold for pain and suffering is set at 10 per cent permanent impairment. Once again, this will exclude many injured workers from the receipt of this benefit, no matter how aggravated their injury or circumstances. The bill also provides that commutations will be restricted to cases in which the worker has a permanent impairment of 15 per cent or more. Therefore the worker will have no opportunity to exit the scheme were appropriate. Why should this be the case? Many injured workers will be forced to remain on minimal weekly payments until retirement age. The threshold of lump-sum statutory compensation for permanent psychological impairment is 15 per cent. Not only is this an unjust, outrageous and unattainable figure, but eminent professionals have raised a raft of concerns about the psychiatric impairment rating scale [PIRS], which will be used to determine this threshold.

PIRS was developed by four forensic psychiatrists who claim it is modelled on the American Medical Association [AMA] guides. Two problems arise. First, some parts of the AMA guides have been adopted and other parts have been ignored. Second, and more important, the AMA guides do not provide an adequate method of assessment of the degree of impairment. They simply provide basic principles for assessment of impairment. The PIRS, upon which workers will be assessed, is not validated in any way. There is no proof, not a shed or proof, that it works. Its authors may sing its praise, but when evidence to support their claim is requested, it is not forthcoming. They will not hand over their evidence. The PIRS authors have ignored the global assessment of functioning [GAF] and the Australian Psychological Society [APS] guides. That is a grave mistake. The GAF is an internationally accepted and validated method. It is what is being used right now, with great success, for assessment.

In material that has been distributed by Dr Julian Parmegiani, a PIRS author, misinformation was circulated in relation to the GAF, including the point that "There is very little published literature about [the GAF's] validity in general and about its usefulness in assessing current impairment and its predicting of future impairment." This is absolutely untrue. The GAF is a worldwide scale. There is extensive literature, such as the publication "Measurement of Psychological Impairment in Matters of Civil Litigation", which also incorporates internationally produced material.

Dr Parmegiani asserts that "The PIRS provides a simple and sensible way of measuring psychiatric impairment." Once again, that statement is not so. The PIRS generates approximately 15,600 different profiles. It is not simple. The Medical Services Committee is an independent statutory body that is set up under the Health Administration Act 1982. The committee consists of experts who advise and consult with the Minister on matters affecting the practice of medicine in New South Wales, particularly on proposed legislation, including proposed amendments to existing legislation that affect, or are likely to affect, patients and medical practitioners. The Medical Services Committee has criticised PIRS and stated:

> No evidence has been provided to the Committee that the PIR[S] method, which has been adopted in the draft WorkCover guides, is a satisfactory method of assessment of impairment of mental and behavioural disorders. No evidence has been produced to indicate that the method has been validated.

In response to that, the authors of PIRS tried to discredit the Medical Services Committee [MSC]. They attempted to divert attention away from the real issues by making disingenuous allegations against the MSC organisation and others. Classic diversion tactics usually involve playing the man, not the ball, but the PIRS authors' tactic will not work because the facts are indisputable. The Medical Services Committee concluded that the PIRS "does not meet the requirements of validation and demonstrable reproducibility and therefore cannot be recommended". In fact, the Medical Services Committee states that it will probably be open to legal challenge. The Royal Australian and New Zealand College of Psychiatrists agrees, saying that the PIRS is an instrument that has not been demonstrated to have validity or reliability, and that further research is necessary. The college concludes that "the GAF scale, with clearly demonstrated reliability, is preferred".

In addition to the PIRS's lack of validity, it wrongly equates psychiatric disorders with mental and behavioural problems. A fundamental error such as this will not lead to an appropriate measure of impairment of injured workers. Psychiatric disorders are only a small subset of mental and behavioural problems. Workplace injuries rarely produce abnormal psychiatric conditions; they produce impairment of normal psychological functioning. This is a statement of fact that is common knowledge, given that most people who work are psychologically normal.

They may experience an abnormal situation as a result of an injury, impairment, or an incident at work, such as traumatic shock, and suffer adjustment difficulties of varying severity and duration. However, very few working people become psychotic, as that term is commonly understood, as evidenced by losing touch with reality or not being able to tell the difference between what is real and what is not real as a result of an unfortunate event. Even those who appear to "go mad" may exhibit such symptoms only temporarily from shock and stress.

Certain disorders such as post-traumatic stress disorder and depression, if severe enough, can cause one to intermittently lose touch with reality, but such disorders are statistically rare in the general population. A psychiatric/psychological disorder is usually considered present if the individual is found, using professionally trained judgment, to present with the essential profile of symptoms described in the diagnostic and statistical manual of mental disorders [DSMIVTR]. This manual is used worldwide by psychologists and psychiatrists to diagnose such disorders.

It is important for the distinction between psychiatric and psychological disorders to be understood. "Psychiatric" is the term for what is known to be mental illness, that is, a condition caused by a biologically inherited or biologically identifiable disorder that can be treated medically. It is possible that biologically determined disorders can be manifested psychologically, such as in the case of memory loss due to poisoning from, say, long-term exposure to solvents. However, this would not be properly assessed using a medical examination. One would need to undergo a psychological assessment.

A "psychological disorder" generally relates to emotional, behavioural or personal problems that can be treated using behavioural intervention or interpersonal psychotherapy, rather than medicine. The overlap is substantial. There are many professionals, psychiatrists and psychologists, from both sides of divided opinion who claim they are able to diagnose and treat such disorders, and demonstrate success in doing so. Severe depression, for example, is known to be best treated by the use of medication in the short term, but a combination of changing one's thinking, using psychological techniques combined with medication, is widely recognised as the best practice in the long term.

The evidence for this is enormous, freely available and widely recognised. For example, some estimates of post-traumatic stress disorder as a result of sexual assault are as high as 80 per cent. But which individuals will suffer the most, why, who will be likely to develop the most severe symptoms, and who will get over it and have no ongoing impairment that is evident in daily functioning may depend on a family background and experience, biological predisposition to stress, attitude to life, the ability to block out thoughts, and so on.

WorkCover has been advised by many experts not to confuse the two concepts of psychiatric diagnosis and impairment of normal psychological functioning, but WorkCover has persisted in doing so. Mental illness affects between 20 per cent and 30 per cent of people at some time in their lives, whereas the full-blown varieties of specific psychiatric disorders generally have prevalence rates ranging from less than 1 per cent to approximately 5 per cent. Relatively few psychological problems which arise from workplace injuries are classifiable as clearly presenting psychiatric disorders, even though they may be seriously impairing.

The Medical Services Committee has stated outright that the PIRS method of assessment virtually precludes psychometric evaluation, which has an essential role in establishing the degree of impairment that is consequential upon mental and behavioural disorders. The WorkCover guides specifically require psychometric evaluation. Quite simply, PIRS does not adequately address this issue. In addition, the statistical techniques relied upon by PIRS arrive at a score—a median measure—which deliberately eliminates extreme cases of impairment. In other words, the statistical method that is used will mute the scores. Experts in the psychological and psychiatric fields fear that the risk of misclassification is high.

Put simply, a large portion of seriously impaired workers will more than likely be mis-classified and ineligible for benefits or common law remedies if PIRS is used. When I spoke to the Minister's staff, they said there are any number of different ways to assess psychological or psychiatric injury, and they want something that is scientifically objective. It is true that there are a number of different ways of carrying out assessment. However, psychologists and psychiatrists aim for best practice in terms of evidence-based techniques.

There is absolutely no scientifically verifiable information available on PIRS. Its authors claim it is being used successfully by the Motor Accidents Authority [MAA], but the MAA will not release its review of the guidelines it uses until after the WorkCover guides have been approved. The Minister's representatives also said that PIRS allows for less individual discretion and instead provides for scientific verification. However, the

doctors who developed PIRS has been advertising in the *Sydney Morning Herald* to run a course—for a fee of something like $1,400—to enable doctors to come up with the very same results using their scale. That is ridiculous.

The scale should be reliable in itself. No-one should have to be trained to come up with the very same results using the very same scale. The scale itself must be reliable across different raters because that is what makes a good scale. The problem with PIRS is that it produces different scores if the assessment is done by different doctors. There is too much individual discretion and not enough science. Finally, the Minister's officers said that the problem with the Australian Psychological Society guides is that they are more subjective than PIRS. However, when questioned in public about scientific evidence of the value of PIRS, one doctor said that scientific principles were not thought to be important and that PIRS doctors thought they "could write a better one". This is extremely subjective. Their scale has never been tested using a scientific method. They rate the scale according to their opinion, using descriptions that are scant and imprecise. I understand that the Australian Psychological Society and the Royal Australian and New Zealand College of Psychiatrists have agreed to further develop the APS/GAF guides, which are currently used by psychologists nationwide, to incorporate that scale into whole-person impairment assessment that could be used under the WorkCover compensation legislation.

The assessment of mental and behavioural impairment is a complex issue that has not been adequately and satisfactorily addressed. The American Medical Association Guides to the Evaluation of Permanent Impairment (5th Edition), which the psychiatric impairment rating scale [PIRS] purports to be modelled on, does not provide an adequate method for assessment of the degree of impairment. The AMA guides refer, at page 13, to the work of the reviewers Brigham, Talmage and Jensalada in its newsletter of November 2000, which emphasises that the criteria of the guides should not be used as direct estimates of disability. It states:

> … impairment percentages derived from the Guides criteria should not be used as direct estimates of disability. Impairment percentages estimate the extent of the impairment of whole person functioning and account for basic activities of daily living, not including work. The complexity of work activities requires individual analysis. Impairment assessment is a necessary first step for determining disability.

The Australian Psychological Society, which represents 13,000 psychologists nationally, and the national and New South Wales branches of the Royal Australian and New Zealand College of Psychiatrists do not intend to use the PIRS even if it is implemented. They say that if they are told that they must use the PIRS to assess impairment and discriminate between those who will receive compensation and those who will not, they will refuse to do so because it would be unethical.

I strongly recommend that the concerns raised by these experts in relation to the professionally unimpressive PIRS be taken seriously and acted upon. Just this afternoon the division of occupational medicine of the Royal Australian College of Physicians, the Royal Australian College of General Practitioners and the Royal Australian and New Zealand College of Psychiatrists met. They all agreed that there was a dire need for an Australiawide scale to be used in relation to assessing permanent impairment. The presidents of the colleges met at the committee of presidents meeting. They would be the auspices, the body that developed an Australian psychological impairment scale.

Dr Johnathan Phillips, the chair of the committee of presidents of the medical colleges, told my office this afternoon that there is a real need for an Australiawide scale to be developed. The colleges are able and willing to work with the psychometric experts—the Australian Psychological Society. The offer presented by the colleges must be accepted, and the PIRS must not be used.

The Hon. GREG PEARCE [4.42 p.m.]: Today we debate the latest in the flurry of flip-flopping legislation from the Government as the unfunded deficit in the scheme reaches $3 billion. What an achievement of financial incompetence and mismanagement on the part of the Government. When it came to power the scheme was in surplus. In just on seven years the scheme has gone from a positive position to a $3 billion deficit, unfunded. And in the last year alone, the deficit has virtually doubled, from $1.6 billion. Congratulations, Mr Della Bosca!

This Government has presided over a scheme that is so badly managed and in such a mess that the deficit is now spiralling out of control, increasing by half a billion dollars every six months. What is the Government's response? A series of lame, contradictory so-called reforms that fail to address the underlying financial and management mess but expose business and the people of this State to billions of dollars worth of unfunded liabilities. Instead of competent reform, we have had a series of unprecedented attacks on workers rights, lawyers, doctors, and everyone else who is charged with the task of rehabilitating and compensating injured workers.

The Government has been continuously warned about the financial and mismanagement problems in workers compensation. Since coming to office in 1995, its response has been a hotch-potch of legislation virtually every year, as it shadow-boxes the cost of the scheme. Legislation passed during 2000 and earlier this year has steadily eroded the levels of benefits payable to injured workers, raised legal barriers to qualify for compensation, imposed punitive disqualifications from benefits, and introduced procedural requirements and regulations that delay access to payment. Despite what can only be described as a scandalous dereliction of duty by the Minister and his predecessors, we are now pressured to deal urgently with another piece of inadequate and unsatisfactory legislation.

The bill was gagged through the lower House in the most shameful and outrageous way and in contravention of the usual parliamentary processes. The Government has irresponsibly denied injured workers and the people of this State the right to full scrutiny of the bill by the lower House, and it is again rushing it through in this House. The Government's addiction to and focus on media spin are well known. It is not committed to dealing with any of the serious issues that face the State; it has to be dragged, kicking and screaming, to deal with its incompetence and mismanagement. We have seen the Government's mismanagement most recently of policing. Finally, after the good work of our Cabramatta inquiry and the shadow Minister, Andrew Tink, the Premier was dragged to the table, kicking and screaming, to do something.

We all remember Premier Carr, in July, trying to pre-empt the findings of the inquiry into Cabramatta policing, blaming the police for taking their eye off the ball. There he was, as usual, blaming someone else for his Government's incompetence. I remember the headline "No Excuses" in the *Daily Telegraph* of 13 July 2001. There are no excuses as long as you can blame someone. That is when Bob Carr wimped out on his responsibility. He said, "I think in 1999 and 2000 the police got their eye off the ball in dealing with these entrenched problems at Cabramatta." When it comes to workers compensation the Carr Government has been asleep at the wheel. The people of New South Wales have suffered as a result and will have to pay for the Government's incompetence.

Within two years of Labor coming to power, the disastrous legacy of Barrie Unsworth's WorkCover was well and truly obvious to all. It was certainly obvious to Premier Carr and the Minister. Indeed, in September the Minister came along to General Purpose Standing Committee No. 1 and said that the backlash against the Unsworth reform led to a number of significant changes, the first of which was the reintroduction of common law access for workers compensation. The Minister was not so worried about the matter at that stage. The Minister went on to say that the change was accompanied "by a significant, and I suppose quite laudable, increase in benefits". The Minister does not stand by those comments, because he now tries to tell us that the many floating cost centres are the real areas to be attacked.

The Government responded by doing something right: it established an independent inquiry to look at WorkCover. It appointed Richard Grellman, who conducted a far-reaching inquiry into the workers compensation system left to the State by the cardigan Premier, Barrie Unsworth. Grellman gave his report to the Government in September 1997. And what did he find? He found that there were serious structural weaknesses in the workers compensation system. He also warned of the likelihood of an ever-increasing deficit. Grellman said that the implementation of a new system for New South Wales was the best option. The Opposition does not endorse everything Grellman proposed, but it acknowledges that he successfully identified a whole series of weaknesses and areas that had to be addressed. Foremost amongst the problems he identified was what he termed the lack of stakeholder ownership in most aspects of the system and the conflicting and inadequate role played by WorkCover itself.

Grellman identified a lack of legal and financial accountability, lack of incentives for licensed insurers, poor management, deficiencies in the premium system, a flawed benefits structure, insufficient incentives for early resolution of disputes, and complex and disjointed legislation as being major problems in the system. The Grellman report left no uncertainty as to the urgency or comprehensiveness of what was required. He recommended that a new system be implemented by 1 July 1998, that the stakeholders be brought together through an advisory council which would have a real role in managing the system, and that the risks to the people of New South Wales would be removed by the introduction of a private underwriting. Grellman made numerous recommendations designed to improve the benefits structure in the interest of workers, employers and the public at large, by better management of injuries with a focus on return to work for injured workers. Importantly, Grellman identified the risks to the Government of continuing to charge premiums at a rate less than the cost of operating the scheme.

But the Government's course of action was already evident and the pattern was already established: introduce a new bill, with all the fanfare Carr could muster, rip away the rights of workers, and all the time

undermine the competitiveness of New South Wales business. Look at the record. In 1996 the Government introduced a set of measures that included suspending increases to permanent impairment and pain and suffering maximums, restricting interest payable on those awards; reducing permanent impairment, back, neck and pelvis awards for pre-existing conditions; and placing a 6 per cent threshold on deafness claims and restrictions on stress claims. But the Government did not do anything about the costs of the scheme, leaving in place a 2 per cent premium rate when it was told that the costs of the scheme for 1996-97 would be at least 3.11 per cent, and so the deficit grew.

A second package of amendments introduced from 1997 included a 25 per cent reduction in permanent impairment and pain and suffering awards, a review of weekly compensation benefits after two years, and other amendments. They also began to tinker with the disputes resolution process by introducing a trial new conciliation process. In 1996 and 1997 the deficit was blowing out and the true legacy of Barrie Unsworth was causing considerable consternation and worry. According to the Carr Government's own inquiry the scheme needed radical urgent surgery. One might ask why concerns were not expressed earlier about the scheme. Grellman gives us the answer by highlighting typical problems faced by funds such as WorkCover where claims take several years, on average, to finalise. The report stated:

> While deterioration (in relation to permanent impairment claims) was noted over the years, its full extent was not captured until the actuarial review of data to 31st December 1994.

It continued:

> The premium rate for the first few years of the scheme was more than adequate, producing a surplus.

It stated further:

> The full extent of the increase in the scheme's underlying true average premium rate was not recognised until the 1995/96 policy year. By 1994/95, the underlying true average premium rate was estimated to be 2.2%, but the surplus was more than adequate to support the subsidised rate.

Until this Government got into power the problems in the scheme were not obvious. It is worth noting at this point some of Grellman's conclusions in his September 1997 report. He concluded, amongst other things:

> The financial cost drivers responsible for the deterioration of the scheme's financial position were primarily permanent impairment and pain and suffering awards, and the deterioration in the duration of weekly benefits.
>
> The culture of the system is undergoing transformation to a litigious lump sum environment. Transformation from an original low dispute, pension based system to the simultaneous growth in costs is not a coincidence. The lump sum benefit structures of separate permanent impairment and pain and suffering awards, and commutations appear to be flawed, resulting in an unnecessarily high level of litigation. This has a detrimental impact on the rehabilitation process.

There was nothing about greedy lawyers or rorters. In 1997 all the problems were squarely placed on the table by the Government's own independent expert consultant. Grellman's ringing conclusion was:

> The Inquiry estimates that the Scheme deficit is approximately $850 million [in 1997], and that the true underlying premium rate is 3% of wages. Unless there is significant reform to the system through effective prevention, injury management and return to work measures, undesirable and divisive initiatives such as benefit reductions and increased premiums will be required to address the deficit and increase in costs.

In September 1997 the Government's own inquiry recommended fundamental change to the system. At the risk of labouring the point, Grellman also said:

> To address the fundamental weaknesses of the system and refocus the behaviour of stakeholders and service providers on its objectives, the only option is to implement a new system.

He went on to outline a new system in detail, but there could be no doubt about his views. He said:

> The board of WorkCover and the Government have significant control over the financial position of the Scheme, setting premium and benefits level. This has distanced both workers and employers from ownership of the system.
>
> As a result, they have accepted benefit cuts and premium increases, respectively, and claim they have made sufficient concessions to address the near crisis facing the Scheme.

Nothing has changed since then. The Government's response to the Grellman report initially was in the shape of its 1998 legislation in which the Government made provision for private underwriting of the workers compensation scheme, thereby setting up a framework for potentially addressing the issue of who is responsible

at the end of the day for the risk in the scheme. The sting in the tail, and one which few really recognised, was that the Government's plan to deal with the deficit was a levy on employers to recover any outstanding deficit. In mid-1998 the Government brought in a number of amendments to the Workers Compensation Act and the new Workplace Injury Management and Workers Compensation Act. There were some good features to that legislation. For example, the new Act established a requirement on the insurer to establish an injury management plan in consultation with the worker and the doctor that required workers to participate at the risk of losing their weekly benefits.

More relevant to the current draft legislation were the amendments to section 51, which virtually removed any restrictions on commutations, subject only to approval by the Compensation Court. As a result of that action by the Carr Government, effectively removing restrictions on commutations, the numbers of commutations increased quite markedly. The scheme's actuaries estimate the impact was that the number of commutations increased from approximately 3,000 to 10,000 per annum. The fact that commutations are now the subject of further concern can be sheeted directly back to this Government's failure to ever properly understand or manage the workers compensation scheme left to it by one of its mates, Barrie Unsworth.

The 1998 amendments also introduced an advisory council, as suggested by Grellman, although with a somewhat different composition. But the Government did not tackle the very fundamental problems with the scheme, namely, the lack of stakeholder responsibility and financial accountability, the policy of setting the premium below costs levels, and the threat to competitiveness for New South Wales business in having such a high-costing scheme. The 1998 amendments provided the Government with some respite because the initial reaction to the amendments, and the changes to the scheme, were that they would produce cost savings and perhaps address the ever-increasing deficit, so the pressure went off for a little while. However, the jury is still out even now on whether the 1998 changes, in fact, achieved any savings for the scheme. It is clear that because the Government did not address the fundamental issue of the risk of the scheme, the deficit continued to be a major problem.

To put it into perspective, when HIH collapsed its losses were hard to estimate but were thought to be in excess of $4 billion, and now more than $5 billion. The WorkCover scheme, which is limited to New South Wales, has a projected deficit of $3 billion, further projected to rise to $5.5 billion by June 2006. HIH operated around Australia and the world. Its collapse has led to major difficulties for the insurance industry and the community throughout Australia, to a royal commission and to a review of regulatory authorities and their supervision of insurance companies. In WorkCover's New South Wales scheme, thanks to the Carr Government, we are facing a bigger hangover than HIH, unless radical change occurs. However, we should not have been surprised. We have seen the Carr Government's record. We have seen it in schools. The Government has to sell schools to fund the education system. We have seen it in health: just last week, three senior managers in the health service resigned, reflecting the lack of morale and direction as well as Labor's appalling record on hospital waiting lists and health.

We have seen it in community safety, policing, crime and drugs. We now have a community whose members cannot leave their cars or homes without expecting them to be broken into, and a community in which children cannot catch the train or go to a shopping centre without being offered drugs. Transport is a mess, with the fiasco of ferries and the bus transitways in Sydney. We all know the extent of the rundown of country roads because of expenditure on the Olympics. Make no mistake about it, the responsibility for the $3 billion and rising deficit rests squarely with this Government because it was asleep at the wheel. The opportunity to shift the risk to the private sector has been lost, at least for the foreseeable future. The insurance industry was gearing up to take over this risk. QBE Insurance told General Purpose Standing Committee No. 1 that it spent approximately $1 million preparing for it. NRMA still favours it. Grellman still thinks it is the answer, but recognises that it is not available now.

The Opposition supported it as a sensible option in 1998 and was hoodwinked by the Government, which twice delayed the announcement and commencement of private underwriting. The incompetence of the Government has had further consequences. John Walsh, the PricewaterhouseCoopers actuary, is on the record blaming the withdrawal of private underwriting, at least in part, for the loss of momentum by insurers to improve management of the scheme over the past 12 to 18 months. In relation to privatising the risk, Grellman said to General Purpose Standing Committee No. 1:

> If you look at the experience of insurers in jurisdictions where the risk is carried by the insurance company—there are some states in the US where this is worth having a look at—there really are some world's best practice processes and procedures to rehabilitate people who are injured. They are doing that because it is their own capital at risk and they want people to get back into the work force sooner rather than later so that that will reduce the cost to them of remuneration of those employees for their incapacity …

He went on:

> At the moment, under the current system, I do not think that there is much incentive for the insurers, given the role that they are playing, to reach for best practice rehab activities.

The Government is still dithering on this. The Minister for Corrective Services—is that not appropriate—introduced this bill in the other place. He said on private underwriting:

> Although originally scheduled to commence on 1 September 1999, this has since been deferred indefinitely for a range of reasons, but mainly because premiums would become unaffordable. The Government has decided that there is a need for a more fulsome review of scheme design to identify the best possible approach to provide that the underwriting arrangements of the scheme assist in delivering the scheme's outcomes.

What sort of fulsome review are we now going to have? What was the Grellman review in 1997? It was this Government's review. There could not have been a more fulsome review, yet now the Government is talking about another review to work out what it is going to do. The Minister for Corrective Services continued—

The Hon. John Della Bosca: He is also the Minister for Agriculture.

The Hon. GREG PEARCE: As the Special Minister said, the Minister for Corrective Services is also the Minister for Agriculture. He continued:

> Issues that arose during the implementation phase for private underwriting, especially in relation to proposed premium levels, insurance performance on injury management and other issues, have highlighted the need for more detailed consideration of these issues. This review will occur probably during the first half of next year.

These were the very things that Grellman and many others who have an interest in the WorkCover scheme told the Government were urgent and had to be dealt with, and now the Minister is talking about having another review next year. According to the Minister in the other House, the reason was:

> In terms of average premium levels, the rate under a privately underwritten scheme would have risen at the time [1999] to approximately 3.5 per cent of wages, compared with the current 2.8 per cent.

That is because in just on seven years this Government has not been able to do anything about the costs in the scheme. So we come back to the nub of the problem. The Government incompetently failed to address the costs and the structure of the scheme, and so the problem gets worse. Grellman put the situation as he saw it on 21 November 2001 to General Purpose Standing Committee No. 1:

> … if I was going to be financially responsible, if it was up to me and I was sitting in Government, I know that I would be charging higher premiums. That would result in two unpleasant outcomes. One is that New South Wales would, on this expense area, become that much more uncompetitive, and it would obviously send a shock into the community, which would be difficult to deal with.

I am not advocating increased premiums. Rather, if the Government had competently acted in 1996 and 1997 and since then, before the deficit got out of control, premiums should have reduced. There are serious consequences of this in terms of equity, responsibility to meet the deficit and the competitiveness of New South Wales. Consider the statement of the Minister for Industrial Relations during the examination of the budget estimates in June this year when he said:

> There is no doubt that many employers are in a position where they are starting to argue, especially in regional areas, that the premium costs are so high they are starting to limit their opportunity to employ labour which means that jobs are being jeopardised or threatened specifically in regional areas and industries where perhaps marginal competition, States like Queensland and Victoria, where WorkCover premiums are relatively lower is an issue.

The Minister and the Government recognise the adverse impact on our economy of this Government's failure to deal with these issues. In particular the Minister was talking about jobs in regional areas. We have often heard from the Treasurer about the Government's supposed performance in relation to budget surpluses, but budget surpluses based on a higher-taxing government than any other in Australia and a property boom are no good when they are achieved at the expense of maintaining and delivering basic services and infrastructure. Where was all this budget management as WorkCover blew out? Compare the New South Wales Government's record on education, health and policing, and its failure to address fundamental structural reform in areas such as WorkCover, with that of the recently returned—it was well deserved—Howard Federal Government, which took the hard decisions and restructured some of the major issues facing us. The Government's incompetence and premiums policy has left us in a situation in which employers in the future will have to bear the cost of the deficit. But employers have paid their premiums and believe that they have discharged their obligations.

I draw attention, for a moment, to the impact of this Government's incompetent management on business, through its failure to deal with the workers compensation problem. In doing so I highlight again that at 2.8 per cent of average salaries workers compensation rates in New South Wales are the highest of those of any State in Australia.

The Hon. John Della Bosca: The rates in Western Australia are higher.

The Hon. GREG PEARCE: The Minister corrects me. The rates in Western Australia have increased. Indeed, since earlier this year many businesses have been re-rated and have received massive increases in their workers compensation premiums. The Government argues that overall there have been savings, however, by having and maintaining the most expensive workers compensation scheme this Government is fostering an uncompetitive environment. After all, New South Wales is the biggest State and is the power-driver of the Australian economy. Such a burden on business is unacceptable.

The Government has made it plain that ultimately its intention is that the deficit, whatever it is, will be met by employers and businesses in this State. Again, one would have to question whether this Government ever had the competence or commitment to deal with reform and private underwriting. The Minister admitted as much when he addressed General Purpose Standing Committee No. 1 on 24 September, when he said:

> Rather than try to tackle fiscal deterioration in isolation, we wanted to … make the scheme serve injured workers, make the emphasis of the scheme the proper and appropriate return to work of injured workers, with proper and direct compensation for them and identification of impairment and their treatment.

That is all laudable. He went on:

> It was a rather bold assumption, but nonetheless I think an appropriate assumption, that the fiscal aspects of the scheme would start to right themselves as the essential objectives of the scheme came back into focus.

The Minister made a very bold assumption that the scheme would just fix itself if he managed to deal with some of the other issues. Unfortunately, he did not deal with the fundamentals and—Surprise! Surprise!—the fiscal aspects of the problem are not fixing themselves. So much for the bold assumption. The warning bells were sounded back in January 2000 by the Institute of Chartered Accountants of Australia [ICAA]. A spokesman for the institute, Mr Scott Arnold, was reported in the *Australian Financial Review* of 19 January 2000 as saying that the Government had not taken responsibility for the then $1.64 billion deficit in the scheme, which had the potential to lead to nasty surprises when privatised underwriting was introduced in October. That was when private underwriting was still going to be introduced. Mr Arnold said further:

> October 2000 is approaching fast and it is highly dubious whether workers compensation in New South Wales is ready for privatisation. New South Wales is still in the dark about how and when privatisation will take place and the true cost implications.

I guess we will no longer be in the dark because the Government has admitted that it is not competent to deal adequately with the workers compensation scheme. Its answer is simply to strike out the option of private underwriting. The Government's plan has always been as far as possible to keep the lid on the problem, push it out as far as possible, and then just slug the employers. Or perhaps the Government is just waiting and hoping for that day when it leaves office and someone else has to deal with the problem. Just look at Bob Carr's statements on this subject. On 20 June 2001 he told the other House:

> The deficit is blowing out—it is currently $2.18 billion—and it is borne by the community of New South Wales.

He said further:

> The day will come when that deficit has to be divided up among all employers—large, medium and small—in New South Wales, each of whom will have to pay a share of it.

The Premier also said on 20 June in Parliament:

> The day will come when some government in New South Wales takes away common law rights—as Kennett did in Victoria—because of the crisis the scheme will be in.

Surprise! Surprise! That day has come just a few months later. Those in any doubt about the Government's plan to just leave this problem for someone else—probably the employers—to deal with in the future need do no more than consider WorkCover's annual reports. The last annual report of WorkCover that I have is for 1999-2000. As far as I know, the current year's annual report has not been tabled. We would not want to table it before this legislation goes through! I quote from note 26:

> When private underwriting commences, the WorkCover Scheme will no longer underwrite policies and will change to a run-off status from that date. Claims covered under the WorkCover Scheme prior to private underwriting will continue to be paid out of statutory funds, with the claims run-off expected to continue for many years until all claims have been paid. The Workplace Injury Management and Workers Compensation legislation provides for the funding of any overall deficit that may arise in the WorkCover Scheme by the payment of a contribution by employers as part of future premiums.

So that WorkCover annual report tells us what will happen: the problem will just have to go away, WorkCover will close up shop because it is not competent to continue operating, and when it closes up shop the future employers in this State will be left to bear the burden. Honourable members who want further proof should look at what Minister Della Bosca told this Chamber in a ministerial statement on 8 June 2000:

> … the scheme has been charging a premium rate below the true cost of the scheme for several years. That has led to the creation of a deficit. The deficit stands at approximately $1.8 billion as at 31 December 1999, and it is forecast to reach $2 billion by the end of this month.
>
> Responsible employer groups recognise that employers bear the responsibility for the deficit.

The deficit was $1.8 billion and, ho hum, it would rise to $2 billion. So the Minister thinks that employers recognise that they bear the responsibility for the deficit. I do not know that employers understand that they bear the responsibility for this Government's incompetence and its inability to deal with the problems that were so forcefully put before it. Those problems have continuously been put before the Government as the bad news keeps on rolling out.

This is not a government that is in touch with or working for the interests of the people. It is arrogant and removed. Worst of all, it is dominated by the unions. One only has to look at the recent history of the new membership of this place to realise that there is now a permanent arrangement in the New South Wales Labor Party that, after serving as secretary or leader of the Labor Council, you get a seat in the upper House and a rapid rise to the ministry. These senior unionists and Labor politicians are now pretty good at looking after themselves, but WorkCover demonstrates to us that they are not even interested in looking after the interests of average workers. Their failure to look after their basic constituency is breathtaking. They are prepared to abandon anyone to cover up their financial incompetence. On 27 November 2001 Minister Amery said during debate in the other place:

> 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.

He continued:

> As with common law claims, the current extreme escalation in commutations and the financial position of the scheme indicate that an immediate restriction of commutations is warranted.

So that is what the Government is prepared to do. It has let the scheme blow out into a financial disaster, then turned around and said, "It is a disaster, so we will just cut out the commutations and common law and do whatever else we need to do to cut out benefits to workers because our incompetence has to be somehow covered up and paid for by the workers of this State." In March and April this year, when the former distinguished Labor Council official and now Minister, the Hon. John Della Bosca, first attempted this package of reduction of workers rights, the unions stood up to him. But, strangely, this time around they are nowhere to be seen. Maybe it has something to do with the cosy jobs they have for each other.

After all, as the deficit in the WorkCover scheme blew out to just on double in the last year, who do you think was sitting on the board? One person was, of course, the new Minister for Police, the Hon. Michael Costa. It is interesting to look at the board papers of WorkCover. In fact, it is quite disturbing. What did the board on which the Hon. Michael Costa was sitting say when presented year in and year out with evidence of the blowout in the deficit, most recently by an extra half billion dollars? Mr Costa and his board noted it! This was a half-billion dollar blowout, but the board did not express any urgency or concern, and did it call for urgent action to rectify the situation. It just noted the blowout.

How could we be expected to believe that the Hon. Michael Costa will be able to deal with the endemic problems, lack of morale and lack of management in the Police Service? When he had the opportunity to deal with the major problems in the WorkCover scheme he sat around with the rest of the board and noted the problems. But the Hon. Michael Costa's role does not compare, does it? After all, who was it who had to smooth the way with the union movement to enable the Special Minister of State to get his second package through? It was none other than the Hon. Michael Costa in his capacity as leader of the Labor Council. I enjoyed reading some of the remarks made by the Hon. Michael Costa in May 2001. He said then:

> From day one our focus was on the plight of the thousands of workers injured at work each year.

In regard to the process on which he and the Special Minister of State agreed, the Hon. Michael Costa said:

> We will put these people at the centre of any reform agenda.

Well, they are at the centre, all right! Their rights are being taken away from them. The Hon. Michael Costa continued:

> Any reform to the statutory scheme must be subject to guidelines, thresholds and formulae that ensure that the injured workers are not disadvantaged.

Compare those remarks with the views expressed recently by Mr Robertson that the most seriously injured workers will be the ones who are worse off because of the common law threshold. That is why Mr Robertson was not prepared to support the package. He was quoted as saying on 26 November:

> The unions remain concerned that the bill fails the Government's stated test that injured workers should not be left worse off by the reforms.

The media and commentators have called Mr Carr's decision to promote Mr Costa a risk, or a gamble, or brave or crazy. I think it is just a payoff. Just look at the comments of Mr Costa made on 20 May 2001:

> We see today's settlement as ensuring ongoing improvements to the scheme while meeting the Premier's desire for downward pressure on premiums.

The Government is beholden to the union leaders for allowing it to proceed with this package. The Government is quite brazen about the union hold. Consider Minister Amery's remarks in the other place on 27 November. What did he say in his second reading speech? He started his speech by referring to the common law arrangements. He said:

> In May this year the Government agreed with the Labor Council … that there be further consultation …

So the Government went and consulted. The Minister then said:

> An extensive consultative process involving many meetings between the Government, WorkCover and the Labor Council resulted in agreement being reached on most points …

The Minister further said:

> However, after consultation with the Labor Council the Government has accepted the view that with the abolition of the second gateway—

that relates to common law—

> a lower threshold of 15 per cent is appropriate.

There it is. The Government worked with and took instructions from the Labor Council; the Government and the Labor Council came to an agreement. And that is what we have. When it comes to pay-offs, what deals have been done to quieten the unions? We did not see union members marching up Macquarie Street today. During debate on the last round of amendments a number of members and I expressed disquiet about the provisions for unions to be paid by the WorkCover scheme through the so-called Claims Advisory Service. I want to know—and the Minister may be prepared to respond to this—what payments have been made, promised or intimated by the Premier or the Minister to buy off the unions.

I understand that WorkCover has called for applications for funding under its delightfully termed "WorkCover Assist program". How many unions have applied for funding from the WorkCover scheme? Clearly the unions have taken their 30 pieces of silver and abandoned the workers. The Minister is sincere about his desire to reform workers compensation, but clearly he is out of his league. He is a bit like the little boy at the country fair lining up his airgun to hit the two targets as they pop up in order to win a soft cuddly toy. One must be struck by the Minister's knee-jerk changes, even since he circulated his draft bill a couple of weeks ago. The Government's reform of the workers compensation scheme has been a series of disjointed, confusing and increasingly complex bills. The Minister's flip-flops have become quite breathtaking. Even the General Manager of WorkCover, Ms McKenzie, expressed concern about the Government's direction with the reform process. When she appeared before General Purpose Standing Committee No. 1 on 24 September she said:

> One of the issues is that he cannot keep chopping and changing every five minutes and keep changing the rules, and expect people to be able to navigate their way through the system. As far as we can we would want to stick to the reasonably well thought-through strategic direction we have at the moment and hope that delivers enough to get the scheme back under control …

There it is. The Minister made a bold assumption, the General Manager of WorkCover hopes that the Government gets the scheme under control but is a little concerned about the Minister's flip-flops, and board members are noting that the scheme is out of control. I turn now to some of the Minister's other flip-flops. How can one go past the flip-flops on common law? Common law was not a problem in the Minister's June 2000 statement on scheme reform, including the 10 principles. In all the Minister's questions and statements during 2000 he never mentioned the pressing problem of common law claims. Then in March 2001 he panicked on the actuary reports and decided to introduce a 25 per cent threshold to kill off common law claims.

Obviously the Minister was flush at his success in butchering claims by motor accident victims with the 10 per cent threshold he introduced to stop injured motor accident victims from being adequately compensated in his reforms to the motor accidents scheme. As honourable members know, the Minister backed down in March in the face of the union backlash and eventually left it to Justice Sheahan to get him out of trouble. Sheahan recommended a 20 per cent threshold and only a few weeks ago the Minister issued his draft bill which provided for a threshold of 20 per cent. However, that was not good enough for the unions so the Minister did another flip-flop to make it 15 per cent. And that is now before the House.

Mind you, that is probably good enough, given that the motor accidents experience revealed that only one victim of a motor accident had received a medical assessment in excess of 17 per cent whole-person impairment as at March 2001. So it will kill off any likelihood of appropriate claims being available to seriously injured workers. I turn to the flip-flops on commutations. In 1998 the Government changed the system in order to encourage commutations. In this House in October 2000 the Minister appeared to claim credit for what seemed to be a reduction in the scheme's deficit. On 10 October 2000 in answer to a question the Minister said that the result of continuing positive outcomes from the commutations strategy and higher-than-expected investment returns for the year were the reasons for the 30 June deficit estimate being reduced from $2 billion to $1.6 billion.

In March when the Minister introduced his now abandoned bill he was not worried about commutations. He referred to the amendments which assumed the continued use of commutations and the proposals to simplify and reduce the costs of the commutation process, for example, by removing the requirement that the Compensation Court approve commutation agreements. So there was no panic in March; it was simply full steam ahead with commutations. The Minister, in another knee-jerk reaction, issued a draft bill to remove provisions relating to commutations. In the past few days he has been told what to do by the unions, so he has left commutations in the bill, albeit in an emasculated fashion, which presumably will not allow much reasonable use of commutations. There is no actuarial evidence or objective basis for any of this. It is simply another slash with the axe by the Minister which stopped when it ran into the Labor Council's resistance. In relation to commutations, the Minister for Agriculture, and Minister for Corrective Services said:

> Schedule 8 of the bill does not abolish commutations, it simply targets them better … the bill seeks to target commutations better by requiring the worker to have a permanent impairment of 15 per cent. Further, there must be a demonstrated, existing and ongoing entitlement to commutation for the worker to be eligible.

The Minister is saying that the Government is targeting commutations, because it wants to remove them from the scheme. I have already commented on the motor accidents experience. Add to that the provisions in schedule 8. The cumulative requirements to qualify for commutation are that two years must have elapsed, there must be an existing entitlement to benefits, and benefits must have been received for the last six months continuously. The effect of that seems to be that it will be virtually impossible to utilise commutation as a means of resolving disputed matters, even when there is a significant disability. That will disadvantage workers who have had their entitlements unfairly placed in dispute by insurers, as is often the case presently.

This Government is well known for lacking any principle when it comes to legislation and this Government is quite happy to have retrospective legislation. As other honourable members have already commented, this legislation is another example of legislation that is not expressed to be retrospective operating retrospectively, in this case with commencement from 27 November. Honourable members have often been told about the savings. First there was the $150 million that my colleague the Leader of the Opposition in this House mentioned we were to expect from the first tranche of reforms. Then there was the $350 million from the abandoned March bill and, to be fair, less the $50 million of extra benefits that were supposed to be paid to workers.

Now, after the revised common law threshold, Minister Della Bosca says that $210 million will be saved. However, if one listens to the actuaries, it appears that the best that might come of this whole saga of amendments might be $65 million, or $110 million in savings to the scheme, and that is without taking into

account the potential negative affects of not having commutations because of the longer-term weekly payments. I ask: Where are the savings on premiums? That is what people are looking for. The Opposition is also looking for savings on premiums to improve the competitive state of business in New South Wales. What about Justice Sheahan's proposed—but, I think, illusory—increase in benefits under section 66 and section 67 to a combined total of $250,000? The Opposition will be waiting to see those results. What about savings from better management of the scheme by WorkCover? On 24 September 2001 Minister Della Bosca told General Purpose Daily Committee No. 1:

> I wanted to give weight to their critical area of claims management and injury management. The critical failure of the post-Unsworth scheme has been the inability to come to grips with that problem.

The Minister is referring to claims management and injury management. The Minister went on to state:

> Certainly there is a lot of evidence, which the Committee will hear later from WorkCover—

The Committee heard it earlier—

> about the actuarial manifestation of that problem.

The Minister recognised the critical area of claims management and injury management, but has not been able to do anything significant about it. We have also been told that WorkCover has adopted a new remuneration system for its agents, the insurers, and that, based on PricewaterhouseCooper's expert opinion and consultation with WorkCover and the insurers, the new remuneration system which has been adopted during the past month by the WorkCover board could well deliver savings of up to $350 million a year to the scheme. Why has the Minister not pushed this along as a matter of urgency? Why has the Minister not sacked the WorkCover board years ago for not taking action? What about WorkCover's absolutely appalling record on premium collection. The Minister admitted in relation to the deficit that the under-collection of premiums last year cost the scheme $120 million.

We have also been told that the move to the Australian and New Zealand Standard Industries Classification [ANZSIC] rating has been thoroughly botched and that, when it comes to premium collections, the scheme is bleeding. I have no doubt that General Purpose Standing Committee No. 1 will focus on that matter when it next interviews WorkCover management staff. The premium discount scheme has apparently also been a disappointment, with its slow take-up by employers. Honourable members should bear in mind in relation to the premium discount scheme that the Minister stated in this House on 27 March:

> WorkCover's scheme actuaries estimate that in its first year the premium discount scheme will result in net savings of $ 6 million and in seven years a cumulative net saving of $352 million to the scheme.

In fact, the bottom line is that any savings at all depend on changes to culture and better management of the scheme—many of the changes that have been suggested by Grellman, the insurers themselves and other stakeholders. Those issues have not been embraced by this Government so the question must be asked: What is the point? The point is that the Government is tired and without ideas, and reverts to type. Its bad habits include trying to get a media spin and thinking that the introduction of bill after bill after bill will actually do something about significant problems. The WorkCover bureaucracy is just as impotent and bereft of ideas and expertise in dealing with the problems that last December the WorkCover board advertised for proposals to reduce the deficit in the WorkCover scheme. WorkCover had no idea how to do that. WorkCover put ads in the newspapers asking whether anyone could help and whether anyone had any ideas. The Minister went along with that, but I note that we have heard nothing as a result of that plaintive cry for help.

What else could we expect from this Government, this mob with its cosy deals and its members paying each other off and promoting themselves, and a Premier who is so out of touch as to appoint "Mr Modesty" from the WorkCover board to the sensitive and difficult portfolio of policing in this State. The Minister will be judged by his results after bludgeoning the changes into implementation. The Opposition expects to see that $150 million in savings from the first tranche. The people of New South Wales expect to see the reduced savings of $210 from these changes. The people of New South Wales expect to see the $352 million in savings from the premium discount scheme. The people of New South Wales also expect to have an answer to the question of what will happen to the unfunded deficit, and they expect to see the growth of the deficit reversed and in good time. Deep down the Opposition knows that the Minister and Bob Carr expect to just parlay it off to future generations because they are too incompetent to deal with the problems. The people of New South Wales will remember that the Premier of this State holds the view that "the day will come when that deficit has to be divided up among all employers … in New South Wales, each of whom will have to pay a share of it".

The Hon. MALCOLM JONES [5.36 p.m.]: I am actually surprised to be speaking to the Workers Compensation Legislation Further Amendment Bill without demonstrations outside Parliament. This is the third tranche of a huge review of workers compensation and attempts to address dispute resolution for statutory claims. Also, Justice Sheahan has attempted to address common law issues. While the reviews have taken place, the workers compensation scheme has continued on its almost delinquent slide into further despondency with an unfunded liability approaching $3 billion. While I do not put a value judgment on the slight changes in direction of the overall review, given those changes I make the point that the stated objectives of the Government are to reduce and get under control the unfunded liability. I now think that the changes are in some jeopardy—not grave jeopardy, but jeopardy nonetheless.

I am not an actuary but, simply stated, it seems to me that the benefits that have been awarded are in excess of the ability of the premiums to support such benefits. I think that needs to be stated categorically on the record. I am also aware of the effect that changes to benefits can have on premiums. Premium reduction has to be a priority if New South Wales is to attract and retain businesses to create positive growth and in turn to create further employment thereby enriching the lives of this State's citizens. To an extent, workers compensation has been talked through and through. This bill makes opting for a common law lump sum settlement a very daunting option. Although common law claims constitute only 2,000 out of the 160,000 claims made in 2000-01, I must say that I am very unhappy about a number of relatively minor issues with which I will deal at the Committee stage. I will also seek information from the Minister in his reply. What are industrial magistrates? Is their jurisdiction the magistrates court? Who is likely to become an industrial magistrate? Will the Minister answer that now?

The Hon. John Della Bosca: We are not in Committee.

The Hon. Tony Kelly: He can answer, but that will be the end of your speech.

The Hon. MALCOLM JONES: In that case, I will wait for the Minister's response in his reply. The bill heralds the abolition of non-economic loss. The threshold of common law damages has been set at 15 per cent permanent impairment. Economic loss under common law is limited to earning capacity prior to the age of 65. The selection of a common law solution in preference to a workers compensation claim will become quite onerous. It is intended by the Carr Government that that should be so. I have two relatively minor objections to make—hence the amendments—regarding the recovery of weekly benefits paid post mortem and prohibition of injured workers from participating in any injury management program. I have problems with a claimant making admissions about the acceptance of a degree of permanent impairment resulting from injury because conditions of injury are rarely static, without improvement or deterioration. I appreciate that borderline cases are catered for in the bill, but I foresee problems here.

To overview the reasons for the bill, WorkCover had to embark upon reviews to bring the unfunded liability under control. Governments have to be cognisant of unfunded liabilities and the fact that they have a direct bearing on the prudential measures by which jurisdictions are judged, especially by international ratings agencies. The interest rates charged upon government debt, which remain at high levels, are regulated by credit ratings, and credit ratings agencies are extremely sensitive to unfunded liabilities on government balance sheets. It is a larger issue than simply what is the commuted, real or present value of this liability—and some members of this House have tried to reduce its quantum. WorkCover must resolve this problem. The benefits will not be as great, the legal profession will not be happy, and there will probably be reductions in standards, but this liability must be controlled, without blow-outs in employment costs.

Whether members recognise the spectre of international competition in attracting industry, and whether economic rationalism is acceptable as politically correct terminology, competition for industry will determine whether New South Wales can provide better prospects for its citizens. Whether our standard of living ultimately goes up or down depends on what we can offer industries to assist them to succeed here in New South Wales. So, irrespective of the hard choices that the injured have to make about the statutory law, the common law and the potential lack of fees for lawyers, and so on, WorkCover must fix this unfunded liability problem. The Hon. Greg Pearce compared the WorkCover problem with the liability left by the HIH collapse. I believe that is a fair comparison, given that the problems are of equal proportion. The WorkCover problem must be fixed. I support the bill and will move minor amendments to it in Committee.

The Hon. Dr PETER WONG [5.42 p.m.]: The Unity Party agrees with the Government that the workers compensation scheme is in need of reform, and that the deficit of the scheme needs to be reduced. In reforming the scheme it is appropriate that legal costs are reduced, but it is also important that the welfare of

injured workers is protected. It concerns me, however, that the Workers Compensation Legislation Further Amendment Bill has come before this House while a parliamentary committee chaired by Reverend the Hon. Fred Nile is inquiring into the WorkCover Scheme. The inquiry is generating a great deal of information that would be valuable to the House in considering this legislation. It would seem reasonable that debate on this legislation should be deferred until that inquiry has been completed. Indeed, I will find it difficult to support this legislation if debate on it is not deferred.

While some elements of the bill are useful, on balance it is very poor legislation and a clumsy attempt at a quick fix for the WorkCover deficit. It will fail to solve the deficit issue, and in the process it will severely and unfairly reduce the entitlements of injured workers to workers compensation. Major stakeholders are strongly opposed to this legislation, including the Labor Council and individual unions, surgeons, injury groups, the Self Insurers Association, the New South Wales Bar Association and the Law Society of New South Wales. Those who support the legislation are the employer groups and the WorkCover Authority. The political alliances that are made these days are strange, and on this issue the Government and the Opposition are firmly behind employer bodies.

I can understand the employer groups supporting this legislation. They are concerned that without it the Government may increase WorkCover insurance premiums. I can also understand the Coalition supporting the employer groups, as the employer groups are the equivalent of its Labor Council, and the Coalition is traditionally allied to employer groups and beholden to the business sector for party donations. The Labor Party's stance is a little less obvious, as it has chosen to abandon the interests of its traditional support base, the union movement. These days the Labor Party receives a great deal more funding from big business than from the labour movement, but that does not forgive the negligence and cynicism of the Minister for Industrial Relations. The Government could have pursued further and better options, but it chose not to do so.

I have taken the time to read a large amount of the written material about WorkCover that is on the public record. It has become clear that WorkCover is indeed in financial difficulty and that the problem needs to be addressed. It is equally clear that the legislation will not fix the financial problems of WorkCover, as has been suggested by many members. That is much to the glee of the Opposition, I suspect, who will be hoping that the whole thing falls in a heap some time before the next State election. The impression I have is that there has been gross mismanagement of the WorkCover Scheme. In fact, there has been almost no management of it, as the WorkCover Authority seems to take no responsibility for managing the scheme and no-one has been particularly diligent in managing the associated assets and debts. There has been no focus on enforcing compliance with paying premiums, and even industry representatives point to a massive underpayment of premiums, which is contributing to the authority being placed in great difficulty. There is a clear need for a major shake-up of the management of the WorkCover Authority. This is the hard action that is needed to reduce the long-term debt of the scheme, to keep a lid on employers' premiums, to protect the State's triple-A credit rating and, equally importantly, to have the scheme in a healthy financial state so that adequate workers compensation payments can be made to injured workers in this State.

So we have to wonder why the Minister for Industrial Relations did not take this course of action when the Premier gave him the job of fixing the WorkCover mess. I suspect that the answer is that this new Minister relied heavily on the WorkCover Authority for his advice. That was a tragic error. The management of the WorkCover Authority and its culture are almost certainly the root cause of the problem and are unlikely to be able to provide the answer. I wonder whether the Minister actually took advice from the equivalent authorities in other States, where workers compensation schemes are being run successfully without major deficits and are providing adequate workers compensation at lower premiums to employers.

A number of members have touched on the deficiencies in this legislation. It effectively denies common law remedies for the most seriously injured, by removing entitlements to compensation for future medical and domestic costs if workers receive a common law settlement. It reduces current workers compensation entitlements—for example, by setting a 10 per cent whole-person impairment threshold for compensation for pain and suffering. It concerns me that in common law claims an injured worker can only claim for loss of earning capacity. In other words, the impact on a person's non-working life is not taken into account. Worse still, these changes may be retrospective, which is grossly unfair for workers who fall on the wrong side of the cut-off date.

The net effect of these and other changes is that people certainly will not want to be injured at work once this legislation is in place—anywhere but work. Even sadder, the people who are most likely to be hit the hardest by this legislation will be manual workers, and therefore lower-income workers, as they are most at risk

of serious work-related injury. This is not good legislation. I am concerned about the incompetence of the Government in allowing the workers compensation scheme to get into such a mess. I am alarmed that the Government is so arrogant that it cannot see the real problem and real solutions. I am also alarmed at the Government's cynicism in deciding that attacking workers entitlements will provide a quick fix, and that electorally the blue-collar workers will have nowhere to go and will vote for the Government anyway.

On that basis alone, I see no reason why the union movement should remain affiliated with the New South Wales branch of the Labor Party. If the Government does not reform the management of the WorkCover Authority quickly, this legislation will come back to bite the Government, and I hope it does. Unless the authority is reformed, it is likely that the deficit will not be brought under control, and the financial security of an injured worker will have been lost with no gain to anyone, including the Government. In that case, the Government will not look too flash in about a year's time.

The Hon. HELEN SHAM-HO [5.50 p.m.]: I welcome the opportunity to speak to the Workers Compensation Legislation Further Amendment Bill, which amends the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998. As I understand it, the bill substantially implements the recommendations of the Sheahan inquiry, which was set up in May this year to consider and make recommendations on the common law aspects of the New South Wales workers compensation scheme. I understand that the inquiry was welcome by the union movement. To that end, the bill makes a number of amendments with respect to claims by injured workers for damages at common law, including the introduction of a threshold of 15 per cent permanent impairment, restricting the recovery of common law damages to damages for past and future economic loss, and introducing new procedures to make the processing of common law matters more efficient.

The bill also makes a number of amendments to the statutory scheme, including the development of formulas to determine lump sum compensation, and the introduction of a threshold of 15 per cent for lump sum payments, statutory compensation for psychological impairment, and a threshold of 10 per cent for pain and suffering. I note that the bill will also restrict commutations to cases where the worker has a permanent impairment of 15 per cent or more, as well as repeal the private underwriting provisions of the Workplace Injury Management and Workers Compensation Act 1998.

Each year, workplace accidents involve more people and cost the State more money than road accidents. In 1997-98 there were a total of 58,604 employment-related injuries, and 181 fatalities in New South Wales. In 1998-99 there were 55,492 industrial injuries, a decline of 5.3 per cent from the previous year. I am sure the decline has to be attributed in part to the increased emphasis on injury prevention and management procedures. I am sure we are all familiar with WorkCover's recent publicity campaigns and television advertisements, which aimed to raise community awareness of workplace safety, about which we are all concerned. Workplace injuries cost the Australian economy $15 billion Australiawide. Needless to say, there are also many indirect costs involved, such as higher levels of absenteeism, increased premiums, staff replacement and retraining, and loss of expert knowledge. These indirect costs are estimated to cost approximately four to 10 times more than the direct costs.

There has been much controversy about workers compensation reform in past years, and the introduction of this bill has been no different. On the one hand, injured workers say the reforms are harsh and unfair and that they will restrict their entitlements. On the other hand, employer groups complain about the spiralling cost of premiums. Then there are the actuaries and economists, who say that the current Workers Compensation Scheme in this State is in absolute crisis, as the Hon. Greg Pearce said.

According to the report of General Purpose Standing Committee No. 1 on the New South Wales Workers Compensation Scheme, which was released in October this year, the scheme is currently operating at a deficit of more than $2 billion, which represents an increase of 73 per cent as compared with last year. Unless something is done, that figure is forecast to increase to more than $3 billion by June 2002 and more than $5 billion by June 2006. I am no economist, but that sort of deficit simply cannot be said to reflect sound financial management. The Hon. Greg Pearce spoke about that at length, so I will not go into it. Given that many substantive issues that are at play here have already been canvassed by other honourable members, including Hon. Dr Peter Wong, I will make only brief remarks. I appreciate the concerns expressed by workers, unions and lawyer groups about this bill—I will meet with the Law Society tomorrow. However, I think it is worth remembering that the Australian Labor Party has built its entire party platform on union and workers' issues. I do not believe that a Labor Government would do anything to jeopardise its major support base. As the Hon. Dr Peter Wong said, this legislation might come back to bite the Government. At issue is the need to

ensure that the whole workers compensation scheme remains viable. Although there are only about 1,600 common law claims based on workers compensation accidents each year, the Sheahan inquiry noted "the availability of common law rights, remedies and damages against one's employer, albeit subject to statutory limitations, has been targeted as a major and unjustifiable source of economic pressure on the relevant insurance scheme".

The inquiry report also found that the life-long protection offered by the statutory scheme works better than a common law damages award in satisfying the needs of a seriously injury worker. It is in light of those findings that the Sheahan inquiry made its recommendations. Those recommendations should not be viewed in isolation, they should be looked at as a whole. Taken together, it is my view that these reforms will significantly improve the statutory scheme for all workers in this State. I believe that Justice Sheehan was impartial in his inquiry.

Some of the positive aspects of this bill include the lowering of the threshold of impairment before a worker can access common damages from 20 per cent to 15 per cent. I believe that will make common law damages more accessible to a broader class of injured workers. I am also pleased that the question of fault will not be taken into account when a worker is claiming non-economic loss compensation. By taking that component of damages out of the common law, all workers will have access to the same entitlement, regardless of fault.

Other welcome aspects of the bill include the increase in non-economic damages under the statutory scheme to $250,000. A maximum $200,000 will be available for permanent impairment, while a further $50,000 will be available for pain and suffering for those who have a permanent impairment of 10 per cent or more. As I said, the bill also provides compensation for psychiatric impairment. Currently no compensation of this type is payable. Payments for domestic assistance required by injured workers under the no-fault scheme will also now be permitted. This provision includes the right to payment for assistance provided by family members. That is a great idea and an essential improvement.

The bill will also streamline the court process in relation to workers compensation claims and reduce legal costs. As a lawyer, I say that legal costs have made the scheme unviable in the past. It will streamline the process by restricting jury trials in common law damages actions, providing for a comprehensive pre-litigation process for resolving common law claims and establishing the District Court as the primary court for hearing work injury damages claims.

The bill makes significant improvements that will benefit all workers. It is disappointing that this fact seems to have been ignored by other honourable members. Whatever way I look at it, it is clear that we must reform the Workers Compensation Scheme in this State. I believe that this bill has the potential to assist in the process of reform and in ensuring the financial viability of scheme. I commend it to the House.

Reverend the Hon. FRED NILE [5.59 p.m.]: The Christian Democratic Party supports the Workers Compensation Legislation Further Amendment Bill. The object of this bill is to amend the Workers Compensation Act, 1987 and the Workplace Injury Management and Workers Compensation Act 1998 and various other Acts, to give effect to the recommendations of the Sheahan inquiry and to provide that the threshold for lump sum statutory compensation for primary psychological and psychiatric injury is to be 15 per cent whole person impairment. We are pleased to note that the Government has, during negotiations over the past few weeks, reduced that threshold level. Originally there was talk of it being 25 per cent, in the draft bill it was 20 per cent, and now it is 15 per cent.

We appreciate the Government responding to the concerns of the unions on behalf of injured workers by lowering that threshold. Further objects are to provide that the threshold for pain and suffering lump sum statutory compensation, except for psychological or psychiatric injury, is to be 10 per cent whole person impairment, to repeal provisions for private underwriting of the workers compensation scheme, and to make other miscellaneous amendments. We note also the concern of the Police Association about psychological and psychiatric injuries to police officers. On 26 November the secretary of the association, Mr Peter Remfrey, wrote to me in these terms:

> I write with concern regarding aspects of the above legislation, which may adversely impact on police officers should it proceed in its current form. In particular I refer to the issue of compensation for psychological and psychiatric injuries.

He went on to state:

> As you would be aware the nature of police employment places officers at risk of psychological and psychiatric injuries. Post Traumatic Stress Disorder is one unfortunate by-product of the policing environment, which left untreated can lead to permanent and devastating injury and illness. Dealing with violent offenders, witnessing the often horrific outcomes of road accidents and investigating the sexual and physical mistreatment of children are but three of a myriad of examples which place our members at risk of these types of injuries.

He then raised the question of how to reduce the impact of these incidents, and stated:

> It is imperative therefore that appropriate programmes of prevention, identification and treatment are implemented to minimise the effects of these incidents on police officers.

It is also critical that officers who suffer such injuries, which often have devastating effects on both the careers and the lives of those affected, are properly compensated. I accept that others, such as ambulance officers, deal with similar horrific accidents, but police officers are in a special category. Because of their occupation they are literally in the front line and are involved with these incidents on a regular basis. Because others such as emergency workers are involved in dangerous employment, that may appear to be giving police special consideration, but I think it can be justified. There is a WorkCover scheme just for miners. Perhaps in the future serious consideration could be given to a WorkCover scheme just for police officers, who I believe are in a special category. We are obviously a long way from that at the moment. The letter went on to state the association's concern about the assessment scheme, and stated:

> The Bill provides that compensation for all workplace injuries be based on various impairment guidelines, which have been developed in consultation with the various experts in the particular field of medical speciality.

The psychiatric impairment ratings scale [PIRS] is not mentioned in the bill. It will therefore be part of a regulation. The bill certainly refers to psychological and psychiatric injuries but it does not specify the method of assessment. It is clear that WorkCover and the Government think it should be the PIRS scheme. Over the past few weeks we have had many meetings with various professionals. The forensic psychiatrists are very much in favour of the PIRS but the psychologists are very much opposed to it. It is difficult for members of Parliament when they receive conflicting advice from professionals. I had thought of moving an amendment, but instead I call on the Government to put on the record that a review of the PIRS scheme will be conducted by a professionally qualified medical group.

The Hon. Duncan Gay: You are very trusting.

Reverend the Hon. FRED NILE: I am asking the Government to put it on the record during this debate. I am asking the Minister to indicate that there will be some future review of the scheme and of any other possible schemes. It would be good to develop a new national scheme for the whole of Australia, but I appreciate that such things do not happen overnight. I hope the Government will agree to my proposal and give some assurance that that will happen. One of the problems in this debate—and again we are looking from the outside—is that there appears to be some conflict between professionals as to who should be involved in these assessments. It could come down to what you might call a turf argument. The psychologists want one thing and the psychiatrists want another. It does not make it easy for Parliament to get an objective response.

Speaking as a lay person, I was very impressed with the argument of the forensic psychiatrists about the PIRS scheme. Deliberately misleading information was given to us as members of Parliament by other persons to try to discredit the scheme. That is not very helpful. Everyone involved in this debate should be scrupulously honest. They may not agree with something, but they should not misrepresent it because they disagree with it. As honourable members know, I am the Chair of General Purpose Standing Committee No. 1, which has held a number of inquiries. The committee released its first interim report in October and is finalising its second interim report, No. 16.

To put this legislation into context the Government has to make decisions on how to administer WorkCover and all the other departments, and it has decided that it would be best to introduce the reforms in stages. I know that frustrates some people who would like instead to see one bill about two inches thick which has everything, answers all the questions and is WorkCover's salvation. The Government decided—and I see some merit in its approach—to have staged improvements to WorkCover, one of the objectives being to aim to reduce the deficit. General Purpose Standing Committee No. 1 refers to this issue on page 15 of its report. The report states:

> The first phase of reform in 2000 centred on corporate governance reforms and reforms of claims handling procedures. It also included provision for the premium discount scheme and a new industry classification system. The first phase also provided for the merger of the Occupational Health and Safety Council and the Workers Compensation Advisory Council to form the Workers Compensation and Workplace Occupational Health and Safety Council.

> Legislation to implement the second phase of reform, aimed at saving the scheme up to $300 million a year and therefore reducing the deficit, received assent on 17 July 2001. The Workers Compensation Legislation Amendment Act 2001 makes extensive reforms to commutation procedures, assistance for injured workers, lump sum compensation, claims procedures and dispute resolution mechanisms. It was as part of this Act's passage through the Legislative Council that the Sheahan Inquiry into common law matters was established and this Inquiry was constituted to review and monitor the New South Wales compensation scheme.

That is the inquiry that I am chairing. I hope that that puts this legislation into context. Other honourable members referred earlier to the ongoing debate about the deficit—a bit like the debate on the permanent impairment rating scale. Committee members have had many briefings and members on the crossbenches receive regular briefings on Tuesday mornings by lawyers and organisations. At some of those briefings honourable members asked whether there was a deficit and, if so, how big that deficit was. General Purpose Standing Committee No. 1 became aware of the deteriorating financial position of the New South Wales workers compensation scheme. As at 30 June 2001 that scheme was operating at a deficit of $2.756 billion—nearly three billion dollars—an increase of $1.167 billion, or 73 per cent, on the figures for the previous year.

It has been estimated that the deficit will increase to $3.228 billion by June 2002 and to $5.468 billion by June 2006. The committee engaged Ernst and Young as consultants as it needed expert advice in relation to this issue. Those consultants agreed that the scheme is somewhat unstable and said that there is a heightened level of uncertainty in estimating the scheme's liabilities. The committee heard evidence from the actuaries that deal with WorkCover. I believe that the figures that have been quoted in relation to the deficit are accurate. Under the item "Financial position of the scheme" on page 11 of the report is the following statement:

> The financial position of the scheme has been reported to be $2.76 billion deficit at 30 June 2001. With respect to the level of deficit, the Committee has received submissions and heard evidence questioning the reported $2.76 billion deficit and the actuarial methodologies and assumptions that formed the basis of this calculation.

The committee sought further assistance from consultants Ernest and Young in relation to the deficit and included that information in its report. I believe it will benefit all honourable members if they have these facts before them. In an appendix to our report entitled "WorkCover Authority of New South Wales—Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 30 June 2001" table 4.3 sets out the estimated deficit as at 5 June 2001 as follows: investments, $5,865 million, claims recoveries, $294 million, other assets, $285 million and total assets, $6,443 million. The actuaries estimated gross outstanding claims at $8,578 million, unearned premiums provision at $378 million, unexpired risk provision at $53 million and other liabilities at $190 million, with total liabilities for the scheme at $9,199 million.

If we deduct assets from total liabilities, we are left with $2,756 million. That table demonstrates how the deficit has been arrived at. The appendix on page 53 of the committee's report actually breaks down the figures for outstanding claims liabilities as at June 2001 as follows: commutations, $1,754 million, weekly payments $950 million, common law, $2,259 million, legal costs, $1,606 million, permanent injury and pain and suffering, $488 million, medical, $471 million, investigation, $306 million, rehabilitation $77 million, death, $66 million, other payments $33 million, pre-WorkCover liability, $31 million and total gross outstanding claims, $8,010 million. Those figures have not just been pulled out of the air; they reflect a real deficit, and that is causing concern in many areas.

How will this deficit affect the rating of this State? The Auditor-General and others have said that this should be shown as money for which the Government is responsible, therefore, it will blow out New South Wales Government accounts. If it was interpreted in that way, this State's triple-A rating would disappear. That would then mean that the State would pay higher interest rates, and it would thus increase the debt for which this State is responsible. This is an important matter. One of the thoughts that went through my mind after having discussions with various members of the House and after chairing General Purpose Standing Committee No. 1 is that there is a temptation to use WorkCover and the deficit as a political football. That is a danger that we are now facing in this Parliament.

We must work together constructively for the benefit of all workers in this State and for the benefit of all those who may be injured in the future. We must ensure that they get proper benefits and so on, but we also want an economic and stable scheme operating in this State, similar to the schemes that are operating in other States. We must work together to achieve that. It was evident in the speech of the Hon. Greg Pearce that the Opposition is tempted to score points from the Government in relation to this issue.

We could argue that the problems begun while the Coalition was in government and that it is not completely innocent with regard to the problems faced by WorkCover. But to do that makes the issue a political

football, with one party blaming the other. The result of that is that the Government is blamed and the Opposition is blamed and we get nowhere. If possible, we should approach this issue as we did with Aboriginal and other sensitive issues; we should try a combined approach and keep politics out of the picture. I may be naive or too optimistic in that regard. I realise the importance of point scoring.

Obviously the Opposition would like to win the next election and sees this as an issue out of which it could make a lot of mileage. My point is that this is the wrong issue on which to do that. I urge the Opposition to focus on other matters but at the same time not give up on making genuine criticism of the scheme and of the Government where justified. We should try to avoid using WorkCover as a political football. This bill seeks to deal with some of the main reasons for the WorkCover deficit, growth in common law claims and excessive expectations, and adverse claims experience for legal expenses. Recently General Purpose Standing Committee No. 1 heard evidence from chief executive officers of workers compensation schemes in other States. It seems that New South Wales is rapidly moving into the New York-Los Angeles environment so far as litigation is concerned. At this stage the other States do not seem to have the problems being experienced in New South Wales; their schemes seem to be quite stable—indeed, schemes in one or two States have no deficit.

The committee will be providing more information about that in its next report. This particular bill seeks to deal with issues such as the permanent impairment threshold, among others. We should note also the level of current premiums because the temptation is to say that the easiest solution would be to double or automatically increase the premiums that employers have to pay. That course would present other problems because premiums are already so high. New South Wales has the highest average premiums of any other States. If we want to chase employers from New South Wales to the other States, then we should increase the premium dramatically.

At the moment, the average collected premium rate as a percentage of wages for 2000-01 was 2.76 per cent, including NTS and GST. However, when that is broken into categories based on record of injuries, et cetera, the percentage is far higher than 2.76. For example, in the hardwood and other timber logging industry employers pay 15 per cent for the provision of workers compensation. In the scaffolding industry the rate is 12.1 per cent compared with 0. 71 per cent for real estate agents or 1.2 per cent for watch and jewellery retailers. Those figures must be borne in mind when quoting an average because some employers pay far more than others. Some categories have been increased recently because of accident records. The original intention of the common law damages provisions in workers compensation legislation was to provide additional compensation to those injured workers where fault could be demonstrated.

Damages were intended to be restricted to the seriously injured. I have already referred to the bills that we debated in March 2001, the original draft of which provided that claims for common law damages would be subject to a 25 per cent permanent impairment threshold. Following significant concerns raised by the union movement concerning the proposal, the Government agreed to refer the issue of the appropriate level for the threshold to an independent commission of inquiry led by Justice Sheahan, who gave close consideration to this matter and whether to adopt the narrative threshold that is used in Victoria where a worker can access common law by establishing to the court that the injury is serious. This includes the proposal that the narrative threshold be subject to an additional requirement that the worker show that loss of earning capacity equates to 40 per cent. However, Justice Sheahan found:

> While the dual option has some attraction for this Inquiry, the evidence, research in Australia and overseas, and submissions made to this Inquiry, have satisfied me that wherever "economic", "narrative" or "subjective" (to the victim) thresholds have been tried, they create scope for interpretation, and erode over time, leading to financial pressure on the scheme and further changes having to be made a few years later.

The purpose of setting a threshold is to ensure that the benefit is targeted to the most appropriate group of employment injury victims. In determining the appropriate level for a threshold this inquiry found that common law damages should not only be available to the most seriously injured workers. Justice Sheahan rejected the 25 per cent threshold originally proposed by the Government. He said:

> The Inquiry is satisfied that a 25% threshold, even with the anticipated improvements to be effected in the WorkCover "guides" would allow the common law damages remedy to only **the most** "serious and permanent injury" (often referred to as catastrophic injury) and or the most "seriously injured workers".
>
> The Inquiry is of the view that a broader class of most/very seriously injured workers should have access to the common law remedy. The Inquiry regards a "seriously injured worker" as one rendered unable to function in his or her pre-injury income.

To ensure this goal was achieved, an impairment-based threshold of 20 per cent was proposed. Clearly, the report's intention was to allow a wider range of matters to be subject to common law claim and not just to the

catastrophically injured. The bill now has lowered this threshold to 15 per cent permanent impairment. In his second read speech the Minister said:

> 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.

Under the current system, prior to the recent rush to lodge common law claims—honourable members would have seen and heard the advertisements in the press and on the radio encouraging people to lodge their common law claims resulting in a dramatic increase in claims lodged—the annual number of common law claims settled is estimated to be about 1,600. As a result of the changes actuaries estimate the number of successful common law claims will increase from 1,600 to an ultimate level of about 2,500 this year. This will not be reflected immediately because of the lack of common law claims being filed, and it may take some time to materialise.

The WorkCover guides that have been made available in draft form to the advisory council give some indication of the types of conditions that might be compensable at common law. A person with a 15 per cent impairment would not need to be catastrophically injured—that is a positive move. Therefore, a person does not need to be a quadriplegic or paraplegic to meet the threshold. As far as I understand the injuries that meet the threshold include reasonably bad back injuries, loss of the sight in one eye, loss of a thumb, and loss of a hand or foot. For those reasons, in view of the problems the Government faces with the cost blow-out and potential increase over the next few years, we believe this legislation is urgent and necessary and we support it. I shall move two amendments in Committee: first, that the bill be referred to General Purpose Standing Committee No. 1 so that it can continue to monitor and review the bill's implications and operations; and, second, that the cut-off date be amended to 31 March 2002. Concern has been expressed that the proposed cut-off date of 1 February 2002 was too early. That amendment will provide additional time and will make many people happy. We support the bill.

[*The Deputy-President (The Hon. Henry Tsang) left the chair at 6.30 p.m. The House resumed at 7.45p.m.*]

Ms LEE RHIANNON [7.45 p.m.]: This bill is an attack on the rights of injured workers. It seeks to reduce their rights to obtain fair and just compensation. It seeks to reduce the costs of the scheme by savagely disadvantaging some of the most vulnerable members of our society. It is a betrayal of the workers of New South Wales, past, present and future. The Greens unequivocally oppose this bill. While we will be moving a number of amendments in Committee to ameliorate the worst aspects of the bill, we remain convinced that the bill should be rejected because of the harm that it will inflict on injured workers.

The right to fair compensation for an injury incurred at work was established early last century after a long campaign by working men, working women and their unions. The argument that the employers have an obligation to fund an insurance scheme to compensate workplace injuries is as valid today as it was in the 1920s. Nothing has changed to justify the watering down of the basic right of an employed person to go to work knowing that an injury will not result in severe financial hardship. It is a mark of progress towards a more civil society that we collectively take care of those who are unable to look after themselves. But it is equally a mark of the failure of the Carr Government to adhere to the values of a humane and humanitarian society that it would seek to diminish the level of that care and dilute the security of the working men and women of this State.

There are many aspects of the bill that deserve close attention. Each of the changes exposes the degree to which the bill is unfair and reinforces the imperative of rejecting the bill. I would like first to mention the appalling way that the Government has misused the parliamentary process to facilitate the passage of this legislation. I am pleased that the honourable member for Bligh, Ms Clover Moore, highlighted this matter in the Legislative Assembly. She pointed out that the Government was showing considerable contempt for the parliamentary process.

Ms Clover Moore tried to stop the third reading of the bill in the Legislative Assembly and made some very important points that honourable members of this House should be aware of. She acknowledged that the workers compensation system needs reform, but strongly opposed the undemocratic handling of this important legislation. She said that this landmark legislation had not been allowed the 28 days for review and consultation, that it had not even had the minimum five days, but was available only three hours before debate. Ms Moore criticised the Premier for abandoning his commitment to parliamentary reform, made when he signed the Independents' charter of reform in the Fiftieth Parliament.

From a look at the history of that charter, it appears that Labor has only engaged it when it either suited it, when in opposition, to try to get the support of the Independents, or when it possibly needed the numbers. Ms

Moore also stated that when the Premier was the Opposition leader he made a public commitment to accountability, scrutiny and transparency in development of legislation when in government. She said that this is a tragic day for Parliament—doubly tragic because the legislation is a shameful abandonment of the rights of injured workers and is driven by cost savings, not workers entitlements. It is worth putting on record that part of the memorandum of understanding is an agreement that tonight lies in tatters because of the abuse of the parliamentary process by the Government. The relevant part relates to the 28-day component. I quote from the memorandum of understanding as follows:

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

We did not see much of that, did we? It has been treated as a joke. Although the parliamentary process has not yet been misused, it has been deviously used by the Government to move this legislation through Parliament quickly.

The Hon. Patricia Forsythe: So you won't be giving them your preferences at the next election?

Ms LEE RHIANNON: I note the interjection from the Hon. Patricia Forsythe about preferences. We certainly will not be giving them to the Coalition, that is for sure, and we do not give our preferences to Labor in all seats. I am pleased the honourable member interjected as she did. What Labor has to watch in the forthcoming State election is "Just vote 1". That is a real option for the Greens and an option that would be painful for Labor. It is interesting to contrast the behaviour of the Special Minister of State and his colleagues with the democratic intent of the memorandum, which was forced from a government that was on the skids and reliant upon the Independents for its survival. The memorandum, which is a statement of what ought to be considered minimal pre-conditions in a democratic society, highlights the arrogance of the Government.

I will return now to some of the key aspects of the legislation, and I deal first with retrospectivity. The bill seeks to retrospectively deny workers access to their current entitlements. In the past few weeks we have found that has caused incredible distress to both workers and the people who represent their interests. The Minister and the Premier may choose to play word games but semantics cannot disguise the fact that a worker injured today will be denied access to the benefits available under the current scheme, even though this legislation has not yet passed or proclaimed. Indeed, at 10.00 a.m. on Tuesday 27 November many injured workers would have been facing a highly uncertain future, knowing that their claims for compensation would have been dealt with under a completely different set of laws, but not knowing what those laws would be.

Injured workers have had a hard time coping with their injuries, with the pain and suffering, with an impaired and often diminished future, and with the vagaries of the WorkCover bureaucracy. Yet the Carr so-called Labor Government has sought to add to their problems by creating bucketloads of uncertainty. This is, in fact, a very cruel bill. It is certainly not democratic, it is not fair and it is not efficient. It has resulted in a massive increase in the number of claims being rushed into court to escape the arbitrary cut-off. Some of those claims, if they had been allowed to follow their due course, may never have been taken to court. Others may have been better prepared if they had not been forced into court by the impending gutting of workers rights by Labor.

The rush resulting from the retrospective nature of this bill has prejudiced the rights of many workers. It is in no-one's interests. If we accept the need for changes to the entitlements of injured workers, the Greens would argue that the only fair and efficient way to determine cut-offs would be by the date of injury. All injuries that occurred before the date of proclamation of the bill would be accessed under the existing scheme and laws, and those that occurred afterwards would be exposed to the changes. Such a transition would have avoided the uncertainty imposed on workers who have already suffered injuries and would have ensured that the rush of claims would not have occurred.

Labor's humanity has taken a battering of late. We all know that so well. This retrospective move strips away any remaining vestige of humanity that Labor may have retained. Our proposal might have inconvenienced a few WorkCover heavies, it might have messed up the Minister's neat plans, but it would have given some sense of security to those workers who are already injured and would have allowed for an orderly transition to the new arrangements. This issue of retrospectivity and how the date was inserted in the bill when it first came into this House is indeed extraordinary. The uncertainty created by this retrospective transition is exacerbated by other severe and punitive provisions of the bill.

I turn now to the 15 per cent whole-of-body impairment. The bill seeks to create a crude and unreasonable barrier to common law access. The proposed 15 per cent threshold would appear to exclude all but the most severe injuries. In addition, by relying purely on a numerical measure of injury that takes no account of individual circumstances, the bill excludes some for whom the common law is entirely appropriate. Consider the loss of a finger for a concert violinist compared with the loss of a finger for a politician, an interesting case to contemplate. The former's career would be ruined while the latter, with some notable exceptions, would not be greatly disadvantaged, at least in the ability to earn an income. By failing to take into account the impacts of the injury on an individual, the Carr-Della Bosca whole-of-body scale dehumanises injured workers and treats them as numbers.

The whole-of-body impairment measure itself fails to measure many aspects of the impact of an injury on a worker's life or his or her ability to regain a future. It is largely untested and its introduction without a pilot scheme leaves open the suspicion that it is designed to reduce entitlements. Many people are deeply angry about this bill because it will be used to reduce workers entitlements, and that is where the Government is working to make savings. Further, the 15 per cent barrier is legislated without any reference to the scales used to measure whole-of-body impairment, although we now understand that this is based on AMA 5 with some modifications. This is as silly as legislating a speed limit without specifying whether it is kilometres per hour or miles per hour.

It is interesting to look at the situation in Victoria. The newly elected Bracks Labor Government moved quickly to restore the common law rights to injured workers that had been so savagely taken away by the Kennett Coalition Government some years previously. The Bracks Government recognised the imperfections of whole-of-body impairment measures. It is true that while they established quite a high threshold, they also created a secondary narrative gateway that gives judges the discretion to hear cases in which the impacts of an injury are permanent and serious. It will be a great tragedy for many injured workers if this Government does not share Mr Bracks' concern for the welfare of workers. One would hope, at least from the Greens perspective but not from that of my colleagues on the Coalition benches, that the Government will consider the impact that this will have on its prospects in a year or so.

I turn now to common law payments. As I said, this issue played out in a very interesting way during the last State election in Victoria. I do not think we can repeat often enough the lessons that that holds for Labor in this State, although the Government does not seem to be hearing them. When Jeff Kennett did away with common law rights, at least he did so honestly and boldly. The same cannot be said for the Carr Labor Government in New South Wales, which has sought effectively to end access to common law and to do it by stealth. In particular, the bill seeks to limit common law damages to past and future lost wages. While some pain and suffering money may be available from the statutory scheme to workers suing at common law, the bill will deny injured workers the ability to be compensated for future additional costs arising from an injury. Honourable members should remember that Kennett did that openly. However, the Carr so-called Labor Government does not have the guts to say, "We are finished with common law", and simply get on with it. That would be the decent thing to do. It would make the scheme operate more effectively in the short term, although the Greens do not support that.

For example, a worker who loses a leg faces a lifetime of operations and will probably need a new prosthesis every six to eight years. Yet these costs are not to be compensated, although they arise as a direct consequence of the injury. So often during these debates I cannot help thinking how removed honourable members are from the dilemma and tragedies that face so many workers, particularly labourers, mineworkers and manual workers generally. We are removed from the hardship and dilemmas that workers face day in and day out. As one person who lobbied the Greens on this issue said, "I suppose all you face is a paper cut." Consider also the case of a young worker rendered quadriplegic. To continue to live independently for the rest of her life, the worker requires significant modifications to her home, ongoing medical and possibly periodic hospital care, assistance with maintaining her house, modifications to her place of work if she is self-employed, and assistance with taking a holiday. None of these costs would be available to be considered in awarding common law damages.

It is sickening to think of the hardships facing injured workers. A severely injured worker who is anticipating large so-called non-economic losses would be foolish to seek common law damages. Many injured workers face a life on the drip feed of weekly benefits from the statutory scheme or, if they are lucky, and this will apply only to a few workers, a much smaller commutation settlement. The Minister, at the behest of the WorkCover bureaucrats, has effectively put an end to common law recovery of damages received at work for all but a small number of workers. In doing so, he has slammed the door on the possibility of many severely injured workers living independently and will force them to contemplate life in a nursing home. For many people it is the difference between independence and life in some sort of institution. That is simply unacceptable, and I am deeply disturbed that we are at this point again.

Members of the Carr so-called Labor Government might feel that they have got away with doing a Kennett on workers compensation, but I assure them that the workers of New South Wales know who has done this to them. When they next go to the ballot box they will remember who sold them out for the big end of town. I turn now to the issue of commutation. Not satisfied with raising the bar on common law and largely rendering it meaningless to the majority of workers, the Carr so-called Labor Government is now making commutation of weekly benefits to the lump-sum payment much more difficult. The exposure draft of this bill exposed the real agenda: The Government sought to end all commutation—simply wipe it out altogether—forcing workers into a life of dealing with WorkCover, being drip fed meagre weekly benefits, which mean nothing more than subsistence.

The second component of the agenda was then to use section 52A of the Workers Compensation Act 1987 to start forcing workers off weekly benefits and onto social security. It is hard to reconcile how mean-spirited and devious that is. After a strong campaign, the Government has been forced to back down and has settled for a second-best solution, in which commutation will be available only to the most severely injured workers, and only after a number of stringent tests. Commutation is an important option for many workers. It can mean the difference between a life of dignity and a life of dependence. The finality of payment, the availability of the lump sum to pay off debts, the freedom from WorkCover and section 52A often allow many workers to start a new life and to begin to recover from the debilitating effects of an injury.

There is no argument for limiting this to the most severely injured workers. Indeed, many workers who would fail the 15 per cent whole-of-body impairment test would benefit greatly from commutation, because it is a way of getting people back into the work force. It is worth noting that commutation is available only if the insurance company seeks it and the worker consents. It should thus be possible to design a set of guidelines for insurance companies under which commutation should reduce total scheme costs. This does not appear to be the case at present, although neither WorkCover nor the Government has been able to explain why. The Greens believe that limiting commutation is not in the best interests of injured workers or of the scheme itself. We believe that the crude and punitive provisions are an ill thought out approach to reducing outlays while leaving many workers held captive by WorkCover.

I turn now to the issue of psychological injuries. The bill seeks to penalise and stigmatise workers who claim for psychological injuries, and the penalties come in a number of different ways for workers who seek to claim in this way. The bill excludes professional psychologists from the assessment process despite their expertise in diagnosing psychological impairment. Further, the bill relies on the psychiatric impairment rating scale—PIRS—to assess the degree of impairment.

This scale has been severely criticised by psychologists as being biased, unreliable and open to abuse. Yet this is a scheme that the Government is retaining. The scale is unlikely to produce repeatable outcomes and by using the medium measure of a set of individual ratings it mutes the extremes of injury impairment. In short, it is highly inappropriate. These guidelines allow no professional discretion. Psychological issues are complex and should be administered by an appropriate professional with room to exercise professional discretion and judgment. It is not just the psychologists who are critical; the New South Wales branch of the Royal Australian and New Zealand College of Psychiatrists, through its chairperson Dr Louise Newman, has called for the PIRS rating system not to be used. She said:

> ... this instrument has not been demonstrated to have validity or reliability and... further research is necessary. Given this situation, an alternative instrument such as the GAF scale with clearly demonstrated reliability is preferred.

What a clear statement, but tragically the Government has chosen to ignore it. Despite the warnings, despite repeated lobbying from both professions, the Carr Government is pressing ahead with a rating scale that is unsafe and unreliable. Further, the bill discriminates against psychological injuries in a number of other ways. These include setting different thresholds for physical and psychological injuries and denying the right to add degrees of psychological and physical impairment resulting from the one injury for the purposes of crossing thresholds. In short, workers with psychological injuries, either on their own or in combination with a physical injury, would be given short shrift.

One can only conclude that the Labor Government has bought into the ill-informed and highly prejudiced view that all psychological injuries are shams. This is nonsense and the Minister knows it to be so. Yet he persists with treating psychological injuries as if they are not real. That is the only conclusion one can come to after reading the fine print of the bill. Teachers, nurses, ambulance drivers, police and social workers are all highly exposed to the risk of psychological injuries and will be penalised by the legislation. In their efforts to confront the most difficult of human situations these dedicated people put their lives and their minds

on the line in the service of society. The very least we can do is ensure that their injuries are compensated for and looked after. The bill demonstrates the extremes of churlish disregard and ingratitude for service to society that have characterised the Carr Government. Perhaps Government members are incapable of understanding the meaning of altruism and dedication to any cause other than their careers.

We have to ask why this is happening. Savings resulting from the bill are paltry, if they exist at all. Expressed as a percentage of the total value of the scheme, they hardly register. Further, the need for savings has not yet been adequately demonstrated. The Minister and the Premier have argued about liabilities and deficits as if they were losses, without explaining that their figures are highly sensitive to economic assumptions. Which member of this House can say where interest rates will be in four years time and what will happen to commercial property values in Sydney? Without the foresight required to predict these figures it is not possible to talk about the scheme's performance.

The argument that massive savings are required is based on the construct that the scheme is in crisis. This has not been proved, nor do we believe that it is provable. The Premier bleats time and again inside and outside the House about the deficit growing at the rate of $1 million a day. It is important to understand what the term "deficit" means. It does not mean loss; the scheme makes a profit. It does not mean debit; WorkCover's assets are growing at an extraordinary rate. "Deficit" is purely an actuarial term meaning the residue that would result if the scheme were wound up, with all the assets sold to pay for the future costs of existing claims in respect of accidents that occurred prior to that date. The size of this figure is highly sensitive to a range of parameters including interest rates and the future costs of existing claims. All of these are only assumptions and slight variations can mean massive changes in the size of the projected deficit.

About the only point there is agreement on is that slight variations in the assumptions can result in enormous changes to the final figure. From an actuarial perspective, the scheme in its present form is just under three years old. The scheme is far from stabilised. Any actuary will tell us that such forecasts cannot be made with any degree of accuracy without a large base of experience, which simply does not exist for a scheme of this stage. Thus the Minister has embarked on what can only be called a panic response to a set of highly rubbery figures. Such is the nature of the Government's propaganda machine that if Ministers repeat the $2 billion plus figure often enough, if the Premier repeats the $1 million a day figure often enough, it is hoped that the rest of us will believe that it is true.

The Greens cannot accept a wholesale slaughter of the rights of injured workers—certainly not based on rubbery figures. The Greens do not deny that the scheme could be improved, and we would support sensible measures that ensure the financial health of the scheme without sacrificing the rights of injured workers. In fact, the advisory council, in co-operation with the previous Minister, demonstrated what could be achieved without leaving workers worse off. Between 1997 and 2000 the costs of the scheme fell from 4.2 per cent of average weekly earnings to almost 2.8 per cent. So it has been proved that there are ways of making savings by improving the efficiency of the scheme without punishing injured workers. The Minister's behaviour in this situation remains perplexing and open to question.

Everyone on the progressive side of politics has his or her own theory on why a so-called Labor Government would launch an assault on the rights of injured workers. One theory relates to an inexperienced Minister promoted too rapidly and with little regard to his ability to deal with a large and wilful bureaucracy letting WorkCover off the leash, allowing it to savage the rights of injured workers. This is a foolish act that will result in significant suffering. It is one that the Minister will now have to live with. Perhaps the Minister thinks that this will build his credentials with the hard men of the right of the ALP—although I would actually put him in that category myself. Perhaps he has an eye on the big end of town to demonstrate that he is Premier material because he can be as tough and as callous as any Liberal leader and thus worthy of their campaign donations.

In any case, he is trading on the loyalty of the working men and women of New South Wales to the so-called Labor Party. Perhaps this time he has gone too far. Perhaps, as the Federal election results indicate, the rust that binds so many voters to the Labor Party will start to crack and there will be defections to other parties, some of which really do care about the rights of injured workers. Labor's betrayal on workers compensation has benefited the Greens. Members would have noted that at the recent Federal election increasing numbers of voters showed that they now understand that the Greens are a viable party to the left of Labor. Indeed, some of our booth workers reported that voters said to them that they felt confident voting for the Greens because of our stance on WorkCover.

While it obviously pleases the Greens to gain support from other constituents, I once again place on record that the Greens would prefer Labor to stand by its principles and traditions in relation to this most fundamental issue. Every member of the Greens would prefer the Labor Party not to sacrifice injured workers for what Labor perceives to be electoral gain.

This bill should be rejected. However, with members of a Coalition who regard injured workers as just part of road kill while they wait for power to revert to them, the Greens know that this legislation will pass. The consequences will be felt by injured workers throughout New South Wales, which is a tragedy of massive proportions. Inevitably in time the pressure will mount for a repeal of this legislation. Over the next 12 months there will be a growing queue of workers who have been done out of their entitlements and who are doing it hard. Meanwhile, the insurance companies will be sitting pretty. Their profits will be mounting and they will be very pleased with what Labor has given them.

Sooner or later—and the Greens hope that it is sooner, before too much damage is done—the pressure for just and fair compensation will be irresistible and honourable members will be back in this Chamber to debate a better scheme. The Greens will continue to campaign for a workers compensation scheme that puts injured workers first. For the Greens, that is the essence of this issue. We have to find a balance between a responsible position in regard to making sure that the scheme works and a scheme that works for injured workers first. The insurance companies, with their massive profits and their consequent ability to purchase political favour, have been able to ensure that it is they and is not injured workers who benefit most of the time from the scheme. The Greens will oppose this bill throughout all its stages, and I urge all honourable members to vote against it. I move:

> That the question be amended by deleting the words "now read a second time" and inserting instead "referred to General Purpose Standing Committee No. 1 for inquiry and report"
>
> 2. That the Committee report by Tuesday 26 February 2002.

The Hon. IAN COHEN [8.22 p.m.]: I support the comments made by my colleague Ms Lee Rhiannon, who preceded me in this debate. I am rather shocked at the direction this Labor Government has taken in dealing with workers compensation matters. I say "shocked", but I would somehow like to go beyond political rhetoric and find out exactly what is going on. There has been an avalanche of complaints from the community, from people who are directly involved and from people who are simply horrified at the position adopted by the Labor Government in New South Wales regarding matters of workers compensation and the very real problems at the grassroots level. People have had their entire lives affected by workers compensation. This is a sad day for New South Wales.

I do not wish to engage in unnecessary condemnation or beat the drum for the sake of those who may have gained some political advantage from criticism of the Government's approach, but the Greens have perhaps shone a light in the right direction for many people. As Ms Lee Rhiannon mentioned, at the recent Federal election there was a massive defection of Labor voters to the Greens in many areas. Many people told me that they voted Greens No. 1 because they feel that the Greens are a political party with a conscience, whereas they feel let down by the Australian Labor Party. Although the Greens may have derived some political advantage from the disaffection of people with the Government, this is certainly a sad time for the workers of New South Wales.

The Greens oppose this bill and condemn the Government for brutally attacking and dismantling injured workers rights to compensation. It is an absolute disgrace that a Labor Government can so viciously attack the very individuals who are Labor's primary support base—workers—and who, time and again, help Labor governments to be re-elected in this State and federally. There are numerous negative aspects to this bill. I will deal with only a few of them because I note that the issues have been well ventilated by honourable members who preceded me in this debate. I believe that compensation for psychological and psychiatric injuries is a glaring hole in the package presented to the community by the Government. Certain kinds of employees are more at risk of suffering psychological and psychiatric injuries than are others, and those employees include police officers, teachers, nurses, ambulance officers and—as I discovered from representations that were made to me today—bank officers, to name just a few.

The level of injuries, particularly post-traumatic stress disorders, is really quite horrendous. Post-traumatic stress disorder can occur when, for example, teachers are assaulted by students, when bank workers are involved in armed hold-ups, or when police officers have to deal with violent offenders, witness the often horrific outcomes of road accidents, and investigate the sexual and physical abuse of women and children. Police officers are also exposed to numerous other traumatic work situations. A few days ago a delegation visited the crossbenchers and among them was Peter Remfrey from the Police Association of New South Wales. It was a real eye-opener to see the types of situations that police officers are forced to deal with in the course of their working life. At the meeting the crossbenchers were shown pictures of customers and bank workers—people who are wholly untrained to deal with such situations—cowering in the corners of the bank during a hold-up. It is essential that workers who suffer these injuries—which can often have devastating effects on both their careers and lives—should be properly compensated.

The bill provides that compensation for workplace injuries will be based on impairment guidelines which have been developed in consultation with various experts in particular fields of medical speciality. The relevant professional medical colleges have endorsed and validated some aspects of the guidelines. However, this is not the case with the psychological and psychiatric guidelines. There is serious disagreement within the profession regarding the validity of the proposed guides for psychological and psychiatric injuries known as the psychiatric impairment rating scale [PIRS]. I understand that the Royal Australian and New Zealand College of Psychiatrists is in fact opposed to the PIRS in its current form. It is also the Greens understanding that the college is prepared to accept a set of guides that have been developed by the Australian Psychological Society as an interim measure pending the further development of guidelines. These are known as global assessment of functioning scales [GAF]. In a briefing paper which was issued by the Australian Psychological Society [APS] the society had this to say about the PIRS versus GAF debate:

> We accept that PIRS is probably valued by WorkCover - whatever its defects - because it seems to fill a gap in that it provides a measure of percentage impairment, such a measure being legislatively required. But a better measure is already available. We have argued elsewhere with WorkCover staff and its psychiatric consultants, notably in the Working Party on the Measurement of Impairment re Mental and Behavioural Problems, that WorkCover NSW should use the Global Assessment of Functioning Scale - GAF, which is part of the DSM-IV system and fits into a more sensible overall approach to assessment designed to suit Australians conditions.
>
> WorkCover NSW and the Government have rejected that advice and have decided to compel the use of the PIRS, apparently seeing the APS/GAF system as too "generous" in terms of capacity of injured workers to achieve the threshold level. That decision is not acceptable to the professions involved.

The basis of the rejection of the guidelines by the college is that the guidelines are untested, invalid, badly constructed and they discriminate unfairly against the most seriously injured and impaired. The exclusion of psychologists who treat the many people suffering from these injuries as assessors is also a matter of serious concern. Other bases for rejecting the guidelines are that they use median measures and some ratings that are open to abuse. The PIRS, which assesses permanent impairment in regard to mental and behavioural problems, is said by the Government and its psychiatrists to measure impairment of psychological functioning in a fair and accurate way. However, according to the APS the PIRS wrongly equates psychiatric disorders with mental and behavioural problems. That does not lead to appropriate measures of impairment.

The APS argues that psychiatric disorders are only a small subset of mental and behavioural problems; that workplace injuries rarely produce abnormal psychiatric conditions, they produce impairment of normal psychological functioning; that psychiatric categories, all or none, do not produce specific levels of impairment; and that DSM-IV, used by AMA5, warns against the use of psychiatric diagnostic categories in assessment of impairment and disability. The APS argues that warnings by experts, including its medical committee and eminent psychiatrists and psychologists, have been ignored by WorkCover. The guidelines are confused, internally inconsistent, impractical and unworkable, and produce erratic and unrepeatable outcomes.

Psychologists and other disciplines are excluded from the process. That is wrong, as there is a need for a multidisciplinary approach. It is also impractical to restrict assessment work to psychiatrists and there are problems of availability and servicing. The conclusion reached by the APS is that the PIRS are too defective to be used for the assessment of permanent impairment in the area of mental and behavioural problems. That is because the PIRS do not cover appropriate ground; it would discriminate unfairly against seriously injured and impaired workers, and it would misclassify many of them as not seriously impaired and deny them access to benefits or common law action. That is because the PIRS are untested in that they are developed by a small group of consultants without adequate field testing.

The PIRS are probably invalid as there are poor descriptions of impairment requiring a psychiatric disorder diagnosis for the worker to be rated as impaired, and they are badly constructed in that they contain loose definitions. There is too much room for disagreement about ratings and they are scored very strangely to raise the bar for injured workers by using the median rating. That leads to serious areas of impairment being ignored. Currently weekly payments of compensation may be commuted by the payment of a lump sum. Presently such a commutation requires the approval of the court with such approval being given only if the court is satisfied that the commutation is in the best interests of the worker and that the worker understands the effect of the commutation and has received advice about its consequences.

In some cases commutations can provide substantial benefits to an employer or insurer and to the injured worker. The benefit to the employer-insurer is that the commutation finalises an injured worker's entitlement to compensation benefits by the payment of a lump sum which often represents a saving, usually a significant saving, on the costs that would otherwise result from the worker receiving ongoing payments of

compensation benefits. A commutation allows an injured worker to control his or her destiny and to remove himself or herself from dependence on the workers compensation system. It also allows injured workers to do things such as pay off their mortgage or car and allows them to undertake other avenues of employment, often financed by those lump sums.

The outcome of the Government's proposal is that many injured workers would be forced to remain on minimal weekly payments until retirement age. The bill allows only a limited number of commutations for the more seriously injured workers. Commutations will be restricted to workers with permanent impairment of 15 per cent or more. The worker must also have a current entitlement to weekly benefits and return-to-work options must be exhausted. The bill also allows WorkCover to impose a punitive work test. The bill does not allow access to common law damages unless the injury results in a degree of permanent impairment of the injured worker of 15 per cent or more. The common law threshold is oppressive and unfair, and may put common law out of the reach of the seriously injured.

The proposed threshold of whole person impairment to 15 per cent will exclude large numbers of injured workers from access to common law. In particular, teachers, police officers, bank workers and other workers who suffer psychological and psychiatric injury as a result of workplace violence will be denied access. It is unfair that workers who suffer serious injury as a result of the negligence of their employer will be unable to receive adequate compensation for the injuries. The bill also restricts claims for damages to loss of past and future earning capacity, and requires that any claim for pain and suffering be dealt with under the statutory scheme. This is unfair as it does not provide compensation for ongoing medical treatment, rehabilitation and other ongoing costs associated with workers' injuries.

Teachers and other workers suffering from psychological and psychiatric injuries may be further disadvantaged because they may not meet the high threshold, 15 per cent, set to access compensation for pain and suffering under section 67. Under the bill compensation will be payable only for permanent impairment which results from psychological or psychiatric injury which is not secondary to a physical injury. A major and genuinely debilitating psychiatric conditions that is triggered by a physical injury will, in future, be assessed for pain and suffering as if only the physical injury existed. If a worker has a serious physical injury and a serious psychological injury which, combined, would take the worker to 28 per cent permanently impaired, the bill does not allow that worker to combine the effect of the injuries to overcome the 15 per cent threshold.

The worker may have 14 per cent impairment of each injury. However, if the worker's physical or psychological injuries do not by themselves exceed 15 per cent the worker will not get over the 15 per cent whole-of-body threshold. In summary on the issue of common law, the bill will impose a very high threshold of impairment on the exercise of common law remedies which, in practice, will be passed by a bare handful of seriously injured workers. The bill will penalise any seriously injured worker who is able to pass the threshold and who succeeds in an action for damages. Under the current scheme a seriously injured worker can recover damages for non-economic loss, being compensation for pain and suffering and loss of amenity of life.

Under the current scheme a seriously injured worker can recover damages also for economic loss, being compensation for the loss of the ability to work either totally or partially; medical expenses and treatment expenses, being money for future treatment or treatment already received; lost superannuation entitlement, being money for loss of the superannuation benefits that the worker would have received had the worker remained in employment; and voluntarily domestic assistance, being compensation for care provided by friends or family of injured workers. Under the Government's proposal, an injured worker will receive at common law only one of the above categories of damages—namely, damages for economic loss.

All other categories of damages cannot be recovered at common law under the Government's scheme. Under the proposed scheme, if an injured worker recovers damages for economic loss the injured worker automatically loses any entitlement to reimbursement for any other treatment expenses, voluntary domestic assistance, medical expenses, compensation for lost wages already received which must be repaid to the insurance company, and access to the injury management program. The practical effect of the removal of those entitlements on the recovery of common law damages will be to make the exercise of common law rights by the most seriously injured unrealistic. The threshold for lump sum statutory compensation in respect of permanent impairment resulting from primary psychological or psychiatric injury is set at 15 per cent permanent impairment.

The threshold for statutory compensation for pain and suffering is 10 per cent permanent impairment, except for primary psychological or psychiatric injuries for which the threshold is 15 per cent. Some provisions

in the bill commenced operation at 9.00 a.m. on 27 November. Therefore, injured workers who had previously been advised that they had certain rights in respect of workers compensation or access to common law will have those rights extinguished. The bill should apply to injuries occurring after a specific date. The bill should not retrospectively extinguish the rights of injured workers. I have received an overwhelming avalanche of material opposing this bill. A letter dated 29 November from the Labor Council of New South Wales to the Special Minister of State, and Minister for Industrial Relations, stated:

> The position of the Labor Council has been made extremely clear throughout the process of negotiation relating to the Workers Compensation Legislation Further Amendment Bill. We now restate our opposition. We are vehemently opposed to the introduction of the PIRS as it has not been validated, nor agreed to by that relevant colleges. The Labor Council proposed alternative guidelines to the Government, that being the APS GAF Scale. This alternative was rejected by WorkCover.
>
> In light of the fact that Labor Council's view has been made clear on numerous occasions it is not our intention to have any representative of the Labor Council, or the Police Association meet with representatives of the Government this evening.
>
> There are various aspects of the PIRS which cause us concern, not the least of which is the fact that the Medical Services Committee has expressed opinion that the instrument has not been demonstrated to have validity or reliability and that further research is necessary.

The Labor Council attached further material to its letter. Paul Hopkins of the Wollongong and District Law Society, also wrote to the Greens to express the society's concerns about the bill. He put forward the following options:

- Psychiatric and psychological injury need to have a scientifically accredited method of assessment.
- Introduction of a binding medical panel.

Mr Hopkins continued:

> Given the extensive changes that the government intends to introduce, Wollongong & District Law Society calls for the proposed legislation to be referred to the General Purpose Standing Committee No. 1 which is chaired by the Hon Rev Fred Nile MLC. This will allow the implications for injured workers to be properly considered.

The Greens also received a letter from John Marsden, who wrote:

> I am extremely concerned in relation to this Workers Compensation Legislation. It is outrageous.
>
> It should be known that the whole basis of recovering damages in motor vehicle accidents has gone.
>
> This office has had four claims since the new legislation, and people are simply not getting paid for pain and suffering. Therefore, I have decided to write this letter in relation to the Workers Compensation Legislation.
>
> My concern about the legislation is that I understand the Government will be seeking to introduce it into Parliament on 27 November 2001. The provisions of this Bill will effectively remove the right of injured workers to common law damages, except where the injury exceeds 20% of whole body impairment. This threshold is oppressive and unfair.

Kate Maher, the President of the Newcastle Law Society, also wrote to me, and, I am sure, to many other members. She said:

- The exposure draft Bill contains provisions that seek to remove injured workers of their common rights. Under these provisions, common law would only be accessible by those assessed as having at least 15% permanent impairment as measured by the WorkCover Guidelines ... This threshold is oppressive and unfair and may put common law out of the reach of the seriously injured.

Martin Bell and Co, Solicitors, wrote to me in a similar vein. Chambers Medical Specialists and Dr Robert D. Lewin, a consultant psychiatrist, also wrote to the Greens expressing concerns about the bill. The Law Society of New South Wales wrote an open letter to members of Parliament, signed by Michael Eggelton, Nicholas Meagher and Bill Weston. The letter reads in part:

- The Bill also contains a provision eliminating commutations. Commutations allowed a worker to seek to have their weekly benefits commutated to a lump sum, thus allowing them to undertake other avenues of employment, often financed by these lump sums.

The Shop, Distributive and Allied Employees Association wrote to the Greens expressing concerns about the Government's failure to release the medical guidelines, the restriction of commutations, and retrospectivity. With regard to the restriction of pain and suffering benefits, the association wrote:

> The bill restricts access to pain and suffering to those individuals who suffer more than 10% whole of person impairment. This would exclude many injured workers from receipt of this benefit no matter how aggravated their injury or circumstance.

In effect, the bill rips off the entitlements of many workers in this State. I am saddened by the passage of it and feel very comfortable about the Greens outright opposition to it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.44 p.m.]: The Australian Democrats do not support the Workers Compensation Legislation Further Amendment Bill. Unfortunately, it is the same old stuff; I give the same speech every six months. If members want all the figures, I suggest they look at my old speeches and update them. The key problems are the same, the solutions are still wrong, and this House is wasting its time. It is simply a case of trying to fix poor management with draconian legislation.

Previously I drew the parallel that when One.Tel went belly-up we said to Jodee Rich, "Look, mate, how do we fix this?" He said, "Give everybody less service for the same money and we will keep the management structure just the way it is." That is basically what is happening here. We are changing the benefits without addressing the cause of the problem. The Government has an extraordinary inability to learn. The solution is obvious. I have stated it before, and I will state it again. It is my duty to the taxpayers and the people of New South Wales, who receive inadequate benefits when they are injured and pay when they do not need to, to state it again. Also, industries do not establish here because of the high premiums and the waste of money.

The Democrats originally blew the whistle on the WorkCover deficit. One of our sources was the courageous Bob Taylor, a WorkCover actuary. Eventually Bob Taylor was shunted from WorkCover as a result of a witchhunt based on the use of an office fax machine; he was drummed out of WorkCover—obviously for reasons unrelated to performance measures. That was the public service way of getting rid of an inconveniently honest man.

The deficit blew out, just as Bob Taylor predicted, and there have been endless schemes to stop it. All those schemes have involved reductions in pay-outs, with ever more threadbare justification. The point is clearly made by the New South Wales Workers Compensation Self Insurers Association. The association insures about 30 per cent of the New South Wales work force, so it is not an insignificant insurer. In a letter addressed to me dated 20 November the association asked that commutations be allowed to continue. It also wrote:

> In many cases the cost to self-insured organisations of workers compensation is 50% or less than what the costs would be to that organisation for the payment of workers compensation premiums to an insurer.
>
> One of the main reasons for this deficiency involves the proper management of workers compensation claims and one of the critical elements to proper management is the ability of a self insurer to commute its liability for the payment of compensation benefits by the payment of a lump sum.

The critical factor is that that association is managing workers compensation in the same industrial, legal and administrative environment as WorkCover but it is doing it fully funded at 50 per cent, or even less, of the premium charged by WorkCover. That is a longstanding fact. Some groups, such as Finemores, provide workers compensation insurance for about 35 per cent of the WorkCover premium.

This clearly indicates that WorkCover is not as efficient at managing its claims and controlling its costs as are other self-insurers because, although WorkCover is charging double the premiums, it is still going backwards. Of course, self-insurers have an administrative advantage in that they are generally discreet organisations with a management structure. Nevertheless, the differential should not be as great as it is. WorkCover should be learning from the self-insurance sector, and borrowing its expertise and implementing it, to try to cut the discrepancy in the cost of managing the scheme. Instead, time and again the Government seeks to reduce workers benefits.

Self-insurers are keen to have the commutation measures changed. I do not understand why the Government is against commutations. Generally, a commutation is the payment of a sum that is about one-third of the estimated cost of the claim. The injured worker receives a third of the amount in the hand and the insurer writes two-thirds off the books. In effect, insurers take a payment now, to save money later.

In getting rid of commutations, except in big cases, the Government is effectively paying more later rather than paying less now. As one insurer said, it is the Harvey Norman "pay nothing for 18 months" scheme—pay more later to finance the delay. Why would the Government want to pay more later rather than less now? Far be it from me to suggest that it is because an election is looming and the Government wants to have a smaller deficit. Without commutations, the pay-outs will not be made and, although the liability will remain for a longer period, there will be more money in the kitty in the short term. I am concerned that poor financial decisions may be made for political expediency. However, if that is not so, I would be interested to know the reason.

I have asked the Minister a couple of times during question time about the mathematics of commutations. If WorkCover does not wish to do commutations for financial reasons, the Minister may so direct the management of WorkCover. Financial decisions should be made by WorkCover; or, because it is in financial difficulty, the Minister or the board should direct WorkCover to do so if they believe it is in its financial interests. However, self-insurers should be allowed to manage their own finances and Parliament should not prevent them from paying commutations, even if they lose money. Therefore I propose to move an amendment in Committee to give self-insurers the right to make their own financial decisions. WorkCover has a deficit, but that is not the universal position of all insurance companies.

Other aspects of the bill that are unacceptable relate to the American Medical Association guidelines. They give some uniformity to the assessment, but the assessment is quite meaningless in terms of a person's employability. It is the key to determining the extent of the damage. When I worked for the Water Board I examined a man who had injured his knee and was unable to squat. This would appear a minor problem except that he was a labourer who spent much of his time jumping in and out of trenches and bending down to pick up bricks, rocks and so on. Because of the pain he could not do his job and there was considerable conflict with his supervisor. I examined his knee and found he had an almost normal range of movement. His knee was not painful except when he squatted and put a load on it. Under the American Medical Association guidelines his disability was only about 0.5 per cent but from a practical point of view he could not do his job.

In court we argued the extent of his impairment. His physician said he had 20 per cent impairment and I said he had 10 per cent impairment. We just plucked the figures out of the air, but under the American Medical Association guidelines his impairment was only about 0.5 per cent, which meant he was not within a bull's roar of getting compensation. This indicates how meaningless these guidelines are to people's livelihoods. However, insurance companies like the guidelines because they give low benefits and result in small pay-outs. Few legal costs are incurred because the guidelines are so objective that no argument can be brooked. The guidelines are also popular with doctors because, once they have learned how to use the book, they can carry out lucrative examinations in a short time, all at the worker's expense.

Insurance companies like to believe there is nothing wrong with people, that they are bunging it on. When I first worked at the Water Board as the junior occupational health and safety doctor, I did most of the compensation work and I had 365 employees on long-term workers compensation, of a total work force of approximately 17,000. They were called nippers and they used to make the tea and look after gangs of about 10 to 15 people. Eventually they were squeezed because it was felt to be a total luxury to have people making tea and keeping the shed tidy. Great pressure was brought to bear to get them back to full duties or to pay them off.

When I commenced at the Water Board in 1983, most of those 365 employees were on long-term compensation for back injuries. I examined them thoroughly every six months in the belief that, with my superior clinical skill, I could pick who were the bludgers. Each time I made them touch their toes and I carefully measured the distance between the tips of their fingers and their toes to see whether it was greater or lesser. It varied a centimetre or two for each individual over a period of years—checked every six months. I was conscious that the weather can cause a variance because arthritic type diseases are worse when the humidity is high. Certainly, I found no pattern and, having discussed their injuries with them, I formed the opinion that most of them were genuine.

There is no up side to being injured because the injured lose the respect of their colleagues and partners because of complaints of pain, and, often, a loss of overtime. The assumption that people were bunging it on for financial reasons was unlikely for commonsense reasons. About this time, the CAT scan was invented and scans revealed that more than half of these employees had a problem that had not previously been diagnosed. Many who were thought to be malingering were found to have a genuine pathology and I believe that if more sensitive scans had been available, the same would have applied to the remaining half.

However, I was hoodwinked by two cases. One fellow who worked on the buses in Western Sydney appeared to be recovering slowly from a back injury. He was due to return to work but he delayed his return by three to four weeks. It turned out that he was renovating the back of his house so that his wife could run a kindergarten and he needed more time to complete the work. He ended up on *A Current Affair*, which was embarrassing for me, but these things happen. I believed he was not as sick as he made out and I was endeavouring to pressure him to return to work, so I was not entirely hoodwinked, although he delayed his return to work by some weeks.

The other fellow was a concreter with severe dermatitis. He could not work with wet cement, because that is very irritant to the skin, so he worked only with dry materials. His condition did not improve and I put

him off work. Eventually the first aid officer, who was a friend of his, visited him at his home and discovered that he was building a magnificent two-storey house, and was using a lot of cement. His condition had not improved because even though he was off work, he was still working with cement. That was quickly stopped. However, it illustrates that the number of people who bung on injuries is only a small percentage, and the suggestion that they should all be sorted out in an adversarial framework is not sound. These assessment numbers that we are inflicting on people are quite meaningless. Injured workers are entitled to be judged, and the courts are better able to do that. We should not be relying on these scales.

I do not wish to talk about the difference between the PIRS scale and the GAF scale, the two psychological scales being discussed. Those sorts of scales cannot meaningfully refer to the impairment to somebody's life any more than the American Medical Association guidelines can refer to physical impairment. We have got to look beyond this to a philosophical basis. The object of the guidelines is to get an objective measure that is cheaper than going through the courts.

The assumption is that a clever recipe, which a clever person can apply, will give an absolutely definitive guideline to compare a person's impairment with a definitive amount of money. That is very convenient for insurance companies and no doubt lessens the costs of an adversarial legal system. But the question should not be how cheap it is to assess people but how to assess each case fairly. We are dealing with people's lives, and the cost of the assessment is very small compared with the amount of harm than can be done to these individuals. Of course, there are the expensive legal costs, the examination and discussion of findings by experts and adjudication and representation in the legal system. In the motor accidents legislation last year I proposed about 70 amendments which were an alternative to the existing adversarial scheme, or what I would call the arbitrary single person assessment. My amendments to the motor accidents legislation were to provide a more streamlined system than a panel.

The idea was that a panel would produce an assessment, which would be discussed with a view to getting justice for the individual. The panel would consist of three people: a medical practitioner, who would decide what was wrong with the individual; a rehabilitation expert, who would assess what that person could do, what changes could be made to the workplace or job definitions to keep them employed in the same place or with the same employer, or what skills they had to develop to gain alternative employment; and a third person, who would look at the reports of the first two and at the employment market and assess their loss in terms of their employability—in other words, was the person significantly less employable than previously, and, if so, what should be done about that? I thought that was a fair way of going about it.

I have not found anybody who is willing to adopt that approach but it is a better middle road than either the legal adversarial system or the God-knows-all approach, applying a recipe of the AMA or one of the psychological rating systems. I can only put this to the House again and hope that one day it will be adopted. Rehabilitation used to be a waste of money, as I have said previously. Insurance companies used to arrange rehabilitation with a company that they owned. At $150 per hour, rehabilitation cost a large amount of money, but it is interesting that the occupational therapist who carried out the rehabilitation would be paid about $27 per hour. Because corporations like to deal with other corporations, they would make a deal for the whole State rather than find a practitioner in each area, which would be far cheaper.

I knew one man who was injured to the extent that he could never return to his labouring job. He was extremely intelligent but was a bit wild in his youth and had worked in jobs that were below his intellectual ability. He had a very good brain, and I thought that with some training he could have found a job that would earn him good money if someone had gone to the trouble to find him alternative employment. I rang the insurance company that was managing his case and said "This man does not need any more rehabilitation. He needs an intelligent job placement agency, and for a tenth of the money you will be able to get him off your books and back at work." The reply was, "I am not empowered to do that. I can only organise rehabilitation or not organise rehabilitation, so I am organising some rehabilitation." More money from WorkCover was being wasted.

Such stories of incompetent management show why WorkCover has not made money. The assumption is that private underwriting would be competently managed and would save a lot of money. I believe that there cannot be private underwriting at the moment because no-one would take on the liabilities. I am not sure whether private insurers are competent or merely callous. The assumption is that because WorkCover is government owned it has a guarantee that it will work in the interests of employees. I must confess I am not sure that I believe that. If something is incompetently managed it ends up being callous, and this legislation is tending to push WorkCover in that direction.

The problem is management, and neither the private sector nor the public sector has a monopoly on good management. There is a shortage of good case managers, and those that exist work for self-insurers. The solution is to pay to bring them in to fix the WorkCover scheme in a systematic fashion. The self-insurers should not be sabotaged by not being able to have commutations because this Parliament is telling them how to run their businesses. It is good that the Government has allowed new types of self-insurers. For some time the guild has looked after chemists as a group that take care of their own self-insurance.

I know that a group for local councils started under Jardine Australian Insurance Brokers Pty Ltd from 1 July this year. Jardine will manage the claims, and it is expected that there will be a 10 per cent drop in premiums, although it is too early yet to tell. I believe that the formation of industry groups for broader based and smaller groups clubbing together to form self-insurers will lead to industry best practice and save quite a lot of money in the workers compensation area, and perhaps that will help WorkCover in that some of its management problems will be taken on by others. Honourable members may be aware that the Construction, Forestry, Mining and Energy Union [CFMEU] has stated that many building employers are avoiding premiums.

If there were a joint insurance scheme in the building industry this would lessen premiums, but it would also lessen premium avoidance as all members would have an incentive to stop other members avoiding premiums, because they would have to pick up the tab. A galaxy of groups have written to me in an attempt to stop this legislation. I have received correspondence from the Australian Plaintiffs Lawyers Association, Marsdens, King Cain, the Law Society, Wollongong and District Law Society, Macarthur Law Society. The CFMEU and the Shop Distributive and Allied Employees Association have provided an extremely good summary of the problems with the legislation.

Under the general heading of why it is bad legislation they refer to its retrospectivity, in that it begins when it was introduced; the restriction of commutations; the failure to release the medical guidelines although they are incorporated in the legislation, which is in fact taking power from the Parliament; a 15 per cent threshold for common law claims, based on the American Medical Association guidelines; restriction of pain and suffering benefits; restriction of common law damages to loss of earnings and earning capacity; and the procedure for an assessment of psychological and psychiatric injuries.

All of these are reasons not to pass the bill. The Alliance for the Victims of Accidents is also against the legislation, and psychologists are concerned about the psychiatric injury rating system. A large number of people are against this legislation. I cannot see that there is any good in it. I understand that the Coalition will not oppose it so I presume it will be passed. It is trying to fix a problem by passing laws, but the problem should be fixed by good management, and as such, by definition, it will not work. It gives me no joy to say that. I hope that my amendment, which would at least give self-insurers the right to make their own decisions on commutations, will be agreed to.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.08 p.m.], in reply: The Government accepts the principle behind the recommendation of the Commission of Inquiry into Workers Compensation Common Law Matters, a common law inquiry, that a whole person impairment threshold of 20 per cent will allow a broader class of seriously injured 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.

Access to common law will be available not only for those injured workers who have suffered catastrophic injuries but for those who have suffered serious injuries. The 15 per cent threshold will target assistance at those workers. The common law inquiry regarded a seriously injured worker as one who is rendered unable to function in his or her daily life so as to earn his or her pre-injury income or a satisfactory equivalent income. Much has been said about where the bill will leave workers. The Government recognises the need to improve benefits for all injured workers, not just those who can prove negligence on the part of their employer. There will be an additional $92 million in statutory benefits under the new arrangements.

The commencement of the new provisions is necessary as the number of common law claims has been rising rapidly. They are currently being filed at the rate of approximately 500 per month. This is a standard approach for budget measures, and was used in the introduction of the Health Care Liability Act. It was also used for previous amendments to workers compensation legislation regarding hearing loss and other issues, and has become a convention in relation to Federal income tax laws and other legislation that affects behaviour, particularly when dealing with revenue-based systems.

Private underwriting was introduced following the Grellman inquiry into the workers compensation system. The Interim Advisory Council, which later became the Advisory Council, strongly supported a shift to private underwriting. Issues that arose during the implementation phase of private underwriting, specifically in relation to proposed premium levels and insurer performance regarding injury management and other matters, have highlighted the need for more detailed consideration. As to premium levels under a privately underwritten scheme, I draw attention to the premium levels that would have arisen if we had moved to private underwriting in June 2000.

In terms of average premium rates, the rate under a privately underwritten scheme would have risen at that time to approximately 3.5 per cent of wages compared with the current 2.8 per cent. I warn Opposition members that if they support a change to a privately underwritten scheme at this time, they will be supporting much higher premiums for most employers. The Government proposes to proceed with a review of scheme design as part of the third tranche of reforms. This will assist in identifying the best possible approach to the scheme so that underwriting arrangements assist in delivering scheme outcomes. This review will probably occur during the first half of next year.

Many speakers in this debate have commented on the psychiatric and psychological provisions in this bill. For the first time the Government is introducing access to lump sum benefits into the statutory scheme for permanent impairments that result from psychological and psychiatric injuries. That is an important advance in the welfare and interests of injured workers as it ensures that workers will be protected, regardless of whether their employer has been negligent. When we consider later this evening, or some time in the future, the Opposition's amendment in relation to emergency services personnel, we must remember that the Government's reforms that put these provisions in the statutory scheme will guarantee protection for workers regardless of whether their employer was negligent. Given the nature of emergency service work, many workers in that field find it harder to establish negligence cases in relation to psychological and psychiatric injury.

Under the whole person impairment provisions those with a permanent psychiatric or psychological impairment can be assessed for lump sum benefits. I stress that the assessment of all workers under permanent impairment provisions—physical or psychiatric—will be conducted by the appropriate medical specialties. Specialist psychiatrists are the medical specialists in this case and they will carry out the assessments. A working party considered scales for measuring impairment. At this point I ask honourable members to contrast the new proposals with the present arrangements. It is not as though the current scheme is some sort of nirvana, where psychiatrically injured workers are treated in an ideal manner, and that we are shifting to some draconian system—which is the description that has been used. It is quite the opposite.

The current system deals cruelly and unfairly with psychiatrically injured workers, particularly those who have difficulty proving negligence. Even when there is a negligence case against an employer, workers must endure a long court case, often involving repetitive examinations and an adversarial assessment by a professional psychiatrist, who would normally be a treating doctor. Such specialists probe and provoke the psychiatrically injured or damaged person in an attempt to establish that they are relatively less disabled or impaired. The current system is wholly unsatisfactory.

I urge honourable members to talk to the psychiatrists who have lobbied crossbench, Opposition and even Government members, including me. They claim that there are problems with the psychiatric impairment rating scale [PIRS] because it has not been tested and is not scientific enough. Yet if they were asked whether it is better and fairer than the current arrangements for psychiatrically injured workers, I bet that most, if not all, will agree that it is. It is not perfect, and some experts will say that it is not yet scientifically validated. We have heard that argument and will debate it later in this place.

However, psychiatrists will say that it deals with psychiatrically injured workers more humanely and quickly and is thus more likely to deliver a fair result than the current hotchpotch of arrangements under the common law. The only way that a psychiatrically injured worker can be compensated under the current provisions is through the common law. There is no provision for statutory compensation for the psychiatrically injured; there are only weekly benefits. It is important to understand that the new system is a big advance; it is not a backward step, as is claimed in some quarters.

I must admit that the new arrangements involve a leap forward, which I acknowledge can create anxiety, especially when developing something completely new. The Government has built into its measures safeguards and monitoring and review provisions that will ensure that any problems identified with PIRS or any other aspects of the new statutory scheme will be addressed in the course of its implementation. As I have said, the scale emphasises functional impairment and measures function or dysfunction in language that can be understood by objective observers, such as family, friends, workmates and employers.

In order to verify the reliability and validity of the system, the general manager of WorkCover will commission detailed academically objective research into the operation of the scale. This will involve WorkCover authorities from other States participating in the project as they face the same challenges. I have also undertaken to involve the New South Wales Labor Council in the details of the review and the monitoring process. Concern has been expressed about the compensation arrangements in the bill. Under this legislation, compensation will be available for a range of injuries for which it is not available under the current system, except through common law claims that involve the requirement to prove negligence and long and involved court cases.

All scales of assessment have their critics. However, the psychiatric impairment scale has some firm supporters, many of whom are treating specialists in this area, including members of the New South Wales section of forensic psychiatry of the Royal Australian and New Zealand College of Psychiatrists and other experts in the psychiatric field who have been involved in developing the scale and who have used its sister scale in the Motor Accidents Authority. Other jurisdictions that are considering using similar scales, such as the Commonwealth and the Tasmanian WorkCover system, have discovered that there is wide-ranging support for a shift to this method of dealing with psychiatrically injured assessments. The task is complex and difficult, but we must introduce a range of measures to give workers as much security and as many guarantees as possible regarding their future protection.

However, this is an important advance. Some would say that we should not introduce a scale or delay its introduction and stick with the present procedures until we are absolutely sure. We are trying to do something unique and something better. It may be a long time before we know for sure—we may never know. These measures must be implemented. The system can be scientifically validated only if it is put in place, tested and checked. At present workers with an alleged psychiatric disorder are required to see psychiatrists and psychologists, which often involves them and their families and friends in a difficult, and sometimes agonising, process before they can receive compensation and care. They are forced to go through the common law system and receive what is commonly known as PO money to force them out altogether. They receive no care: they are simply chucked off the ramp.

The Leader of the Opposition made much of the evidence given by the WorkCover actuary to the General Purpose Standing Committee No. 1. He quoted Mr Finnis as saying that it will take up to five years to assess the impact of the current changes, as if this was some new revelation or devastating fact against the bill. The Leader of the Opposition is often orchestrating a chorus of disapproval from the Opposition benches. However, I make the observation that the Leader of the Opposition in the other place and former Premier Fahey made some critical decisions about this scheme. That was seven years ago, and the Leader of the Opposition in this House admitted in his contribution, quite fairly, that we will not know the effect of those reforms, or even the reforms of 18 months or two years ago, for at least five years. That is an admission that we are dealing with long-term trends that are difficult to manage.

In November 1994, advice was received by the Minister that the level of scheme reserves allocated to support premium stability had reduced significantly since May. The level of these reserves had reduced by $249 million. The advice given to the Government at the time was not to reintroduce measures involving common law, which are back in the scheme. For that reason we have been continually playing catch up with the WorkCover system. The Hon. Dr Arthur Chesterfield-Evans is right on this occasion, and he has made similar comments previously. However, he was a little unfair in his comments about WorkCover and its management. Of course, the real answer to WorkCover premiums and to looking after injured workers is to prevent injury in the first place by better occupational health and safety policies, by implementing incentives and motivation in the scheme to guarantee that prevention, by better injury management and case management and by officially attending to the needs of injured workers.

The Hon. Dr Arthur Chesterfield-Evans: Why don't you ask for self-insurance?

The Hon. JOHN DELLA BOSCA: We will get to that debate in Committee. The bottom line is that the only way to get to the crunch issues is to deal with the inadequacies of the dispute resolution system. That system is totally adversarial and destructive of injury management and injury prevention. I commend the bill.

Question—That the amendment be agreed to—put.

The House divided.

Ayes, 5

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

Noes, 27

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

Question resolved in the negative.

Amendment negatived.

Question—That this bill be now read a second time—put.

The House divided.

Ayes, 27

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

Noes, 5

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

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clause 1 agreed to.

Clause 2 and schedule 4

Ms LEE RHIANNON [9.39 p.m.], by leave: I move Greens amendments Nos 1, 30 and 31 in globo:

No. 1 Page 2, clause 2, lines 6-14. Omit all words on those lines. Insert instead:

This Act commences on a day or days to be appointed by proclamation.

No. 30 Page 33, schedule 4 [14], proposed clause 9 (1), lines 6-13. Omit all words on those lines. Insert instead:

(1) An amendment made by Schedule 1 to the *Workers Compensation Legislation Further Amendment Act 2001* applies in respect of the recovery of damages after the commencement of the amendment (and so applies even if the injury concerned was received before the commencement of the amendment) but does not apply in respect of the recovery of damages if:

(a) proceedings for recovery of the damages were commenced in a court before the commencement of the amendment, or

(b) notice of the injury concerned was given to the employer in the 6 months preceding the commencement of the amendment and proceedings for recovery of the damages are commenced in a court in the 6 months after the commencement of the amendment.

No. 31 Page 34, schedule 4 [14], proposed clause 11, lines 26 and 31. Omit "1 February" wherever occurring. Insert instead "1 April".

These amendments deal with the important issue of retrospectivity, which must be removed from the bill. Effectively, the bill cuts off common law claims and some aspects of commutations from 9 o'clock on the day of the introduction of the bill, that is, 27 November 2001. As my colleague the Hon. Ian Cohen and I spelled out clearly in our contributions to the second reading debate, this provision is unfair and unnecessary and will lead to a great deal of uncertainty for injured workers, particularly when they are trying to get their lives back together at a most difficult time. These amendments remove retrospectivity and allow commutations to continue until 1 April 2002. That is in line with other matters and takes into account the closure of courts during the summer break, which is the reason we chose the later date.

Amendment No. 30 allows for the existing common law system to apply in respect of damages when proceedings were commenced before the commencement of the amendment or notice of the injury was given in the six months prior to the commencement of the amendment and proceedings are commenced within six months of the commencement of this amendment. On many occasions people in this place have argued that retrospectivity is a great principle, but it is unfair and penalises people unexpectedly. These amendments provide the opportunity for members to do the right thing. I commend the amendments to the Committee.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.41 p.m.]: It is necessary that the new provisions commence as common law claims have been increasing rapidly and currently are being filed at the rate of approximately 500 per month. In the past two weeks the rate of filing has been much higher. The new common law and commutations system applies to all claims lodged after the introduction of the bill on 27 November 2001. Any common law claim not filed by that date will be assessed according to the new rules. If a matter is already before the Compensation Court, it can be finalised by way of commutation. The intention to reform the common law has been known for at least seven months. The increase in common law claims over that period indicates that people have had the opportunity to lodge claims under the old system if that is their desired course.

In matters such as this it is proper to name the commencement date as the date of introduction of the bill. As I said in my second reading speech, previous amendments could have resulted in inequities if various forward dates had been chosen. In a variety of other jurisdictions, including the Federal tax jurisdiction, adopting the date of introduction of the bill has become standard procedure. It is certainly standard practice for budget-related matters. In 1997 the reductions in workers compensation benefits for pain and suffering applied from a specified date regardless of the date of injury. As I said earlier, the 6 per cent threshold for hearing loss applied from the date of announcement in 1995 and the bill was introduced one month later. For those reasons the amendment is opposed.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.42 p.m.]: The Australian Democrats support the amendment. We do not believe in retrospective legislation. We believe it is a bad step.

Amendments negatived.

Clause 2 agreed to.

Clause 3 agreed to.

Schedule 1

Ms LEE RHIANNON [9.43 p.m.], by leave: I move Greens amendments Nos 2, 3, 5, 11 and 12 in globo:

No. 2 Page 3, schedule 1.1 [2], proposed section 151A (1) (a), line 15. Insert "weekly payments of" before "compensation".

No. 3 Page 3, schedule 1.1 [2], proposed section 151A (1) (c), lines 23-25. Omit all words on those lines.

No. 5 Page 6, schedule 1.1 [7], proposed section 151G, lines 15-21. Omit all words on those lines. Insert instead:

151G Only damages for past and future economic loss may be awarded

(1) The only damages that may be awarded are:

(a) damages for past economic loss, and

(b) damages for future economic loss.

No. 11 Pages 8 and 9, schedule 1.1 [8]-[13], line 11 on page 8 to line 3 on page 9. Omit all words on those lines. Insert instead:

[8] Section 151M Payment of interest

Omit section 151M (3).

[9] Section 151M (4)]

Omit "or (3)".

No. 12 Page 9, schedule 1.1 [15]-[18], lines 9-24. Omit all words on those lines. Insert instead:

[15] Section 151Q (2) (a)

Omit the paragraph. Insert instead:

(a) may separately determine the amount of damages for future economic loss and the amount of damages for past economic loss, and

These amendments will return some humanity to the bill as well as give a little bit back to the Australian Labor Party. Under the provisions of the bill, once common law damages have been awarded the injured worker is excluded from any benefits from a statutory scheme, including injury management. However, that is when hardship kicks in, when workers cannot access the all-important assistance on how to look after their injury on a day-to-day basis. Further, common law payments are restricted to economic loss, which is defined as past and future income. A seriously injured worker from a low-paid occupation thus would be severely disadvantaged.

The reason for my earlier comments on this aspect is that often many problems arise because people in this place have no concept of how difficult life is for injured workers. This legislation is weighted against people at the bottom of the income scale. Amendment No. 2 provides that a recipient of common law damages will be able to access other payments and support from a statutory scheme other than the weekly payment of benefits, including assistance with medical costs, prostheses and modifications to the family home or place of employment. Amendment No. 3 allows for continued access to injury management programs. This amendment is similar to that proposed by the Outdoor Recreation Party. It is pleasing that we agree on this important issue.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.45 p.m.]: The amendments are not supported. The Government has generally tried to remain faithful to the recommendations contained in the report of the Commission of Inquiry into Common Law. When the Government has varied the recommendations it has always been in favour of injured workers by adjusting the threshold or enhancing benefits under the no-fault scheme. However, these amendments fundamentally alter the scheme recommended by the Commission of Inquiry.

To change one part of the system by changing entitlements to those who pursue common law benefits so that they can also access benefits that would otherwise have been available to them under the statutory scheme will fundamentally alter the package of reforms. It will also have cost implications. The report of inquiry found that recovery of common law damages should continue to have the effect of commuting or redeeming all the plaintiff's remaining rights to statutory benefits and benefits from the scheme's injury management program. Therefore, the choice represents a significant decision on the claimant's part requiring careful thought and competent advice, but no longer requires statutory prescription. The Government does not support the proposed changes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.47 p.m.]: The Australian Democrats support these amendments. It is extremely important that the cost of the most basic aspects of medical treatments beyond normal day-to-day living expenses are met. The cost of prostheses and treatment varies greatly. Those costs are often large and unexpected imposts that are hard to budget for. The problem with common law settlements is that huge lump sums are given to people effectively as their lifeline and often they are not familiar with managing that process. Not only do they have to plan for a certain income per week or month to live, they also have to save some of that lump sum to meet the impost of treatments, imposts that may increase with time. The cost of medical equipment has increased faster than the consumer price index has ever done, particularly with much of that sort of treatment being imported and our dollar going down. It is not unreasonable for this matter to remain in the bailiwick of WorkCover rather than being left to be managed by individuals who will now receive a lump sum payment in a declining interest rate regime.

The Hon. MALCOLM JONES [9.48 p.m.]: A person may elect to go for a common law settlement and, after he has made that decision, his injury may deteriorate. Earlier the Hon. Dr Arthur Chesterfield-Evans made a point from a doctor's perspective about injured people he had managed. From a financial perspective I have looked after many people who have been injured, and conditions do change. When a person claims under common law at a certain point in time and years later the condition deteriorates, that person is then excluded from an injury management program. Here I refer particularly to Greens amendment No. 3, which is similar to my amendment. I urge the Government to reconsider its position on this matter because this situation can be quite heartless and, in fact, unintended.

Amendments negatived.

The Hon. MALCOLM JONES [9.50 p.m.]: I move Outdoor Recreation Party amendment No. 2:

No. 2 Page 4, schedule 1.1 [2], proposed section 151A, lines 3 and 4. Omit all words on those lines.

Upon the death of a person who had elected to seek a common law benefit, and had received weekly benefits whilst waiting for the case to be heard or from the time of being injured, the Government will be able to reclaim weekly payments for compensation already paid. In real terms, whilst the family of a loved one who suffered an accident or industrial illness that resulted in the death of the worker after, say, a protracted period of great anxiety—not just medical or serious financial anxiety—is on edge and in a terribly emotional state, WorkCover can arrive post mortem and take coins from the corpse's eyes. I ask the Committee, as a gesture of goodwill towards a bereaved family, to approve my amendment No. 2 and delete paragraph (a) from new section 151A (2).

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.53 p.m.]: The Government is sympathetic to the concerns that have prompted the amendment. However, the amendment would result in double compensation being paid in most cases. The reason for the Government amendment is that injured workers are required to make a choice, and now that choice involves a zero sum. Under the new arrangements being put in place, injured workers will have a permanent safety net that will allow them to receive statutory benefits and be looked after in a variety of ways. However, those who elect to make a claim under the common law will give up their right to their workers compensation entitlements. That is the effective state now, and no change is proposed by the bill. The amendment moved by the Hon. Malcolm Jones would provide a new, and double, benefit.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.53 p.m.]: This is a very reasonable amendment. Those who have seen people dying of asbestosis could not help but be moved by their circumstances. The Hon. Malcolm Jones summed up the position very well. His amendment should be supported.

Amendment negatived.

Ms LEE RHIANNON [9.54 p.m.], by leave: I move Greens amendments Nos 4, 10, 13 and 29 in globo:

No. 4 Page 5, schedule 1.1 [6], proposed section 151DA (1) (a), line 17. Omit "15%". Insert instead "10%".

No. 10 Pages 6 and 7, schedule 1.1 [7], proposed section 151H (2), line 32 on page 6 to line 13 on page 7. Omit "15%" wherever occurring. Insert instead "10%".

No. 13 Page 12, schedule 1.2 [6], proposed section 314, lines 18, 31 and 35. Omit "15%" wherever occurring. Insert instead "10%".

No. 29 Page 28, schedule 3 [4], proposed section 60AA (1) (c), line 5. Omit "15%". Insert instead "10%".

These amendments, if passed, would make common law more accessible to injured workers. The bill, as we know, creates an excessive barrier to the accessing of common law. The 15 per cent threshold would exclude all but those with the most severe injuries. Further, by relying purely on a numerical measure of injury, which takes no account of individual circumstances such as the loss of a finger by a concert pianist, the bill will exclude common law access to some for whom such a claim is entirely appropriate. Further, the 15 per cent barrier is legislated without any reference to the measure of whole-of-body impairment.

The way in which the bill is structured at the moment is very unfair. It will deny common law access to a large number of people. The bill, looked at in its totality, can be seen to have the aim of crippling common law. It would be more honest of the Government if it just jettisoned the bill in total because its aim is to cripple common law. These amendments reduce the barrier to 10 per cent whole-of-body impairment, which clearly would be fairer and more reasonable. I commend the amendments to the Committee.

Amendments negatived.

Ms LEE RHIANNON [9.56 p.m.]: I move Greens amendment No. 6:

No. 6 Page 6, schedule 1.1 [7], proposed section 151G. Insert at the end of line 21:

, and

(c) damages for economic loss associated with or resulting from the purchase and use of a wheelchair, including reasonable modifications to the worker's home and place of work.

This has been nicknamed the wheelchair amendment. It restores some dignity to injured workers who wish to pursue common law actions. I will be interested to hear the Minister's response to the amendment. The Greens had hoped that the Government would be able to support the amendment. It is moved in recognition of the fact that injured workers who are confined to a wheelchair will not be able to recover at common law anticipated future costs associated with their mobility, due to the punitive definition of economic loss. The Greens amendment provides that the damages that may be awarded include the purchase and use of a wheelchair and the costs of reasonable modification to the worker's home and place of work.

If the Labor Government opened up its mind and accepted the amendment, it would be throwing a lifeline to these injured workers. It would restore an ounce of humanity to their circumstances. The Government has said that under the statutory system workers will be able to get such necessities. However, the Greens say that injured workers who wish to push for actions at common law also should be able to purchase and fund such necessities. We know that injured workers can get more money at common law. The Government has intimated its unwillingness to support this amendment, showing that its real agenda is to push workers out of the common law system. The Greens understand that the cost of this provision for this specific group of workers is not huge, and the Government could do the right thing by allowing workers to choose to pursue their common law rights to try to get a reasonable payment. I commend the amendment.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.58 p.m.]: As Ms Lee Rhiannon specifically asked me to respond to the amendment, I feel obliged to do so. These costs are already covered under the no-fault statutory scheme. In fact, the very point of the amendment is defeated by the fact that the Government, quite openly and fairly, seeks to ensure that injured workers are properly looked after under the statutory scheme, regardless of whether their employers are at fault or not. That is not something that the Government has tried to keep secret from this debate. It has been quite upfront in saying that it is trying to ensure that the statutory scheme properly looks after injured workers.

The problem with common law is that a judge calculates the cost of future modifications such as wheelchair modifications, prosthetics and modifications to vehicles and houses on a once and for all basis. There is no provision for any change to the payment throughout the worker's life or any requirement workers might reasonably have that they would otherwise be entitled to if they are in the statutory scheme. What we are saying up front is that the properly managed statutory scheme we are putting in place will do that. The statutory scheme will look after injured workers better than common law possibly can. It is the appropriate vehicle through which workers should be compensated for such losses. I am not ashamed about the fact that we are encouraging workers to stay in a scheme that best looks after them, rather than opt for what looks like a substantial amount of money but which will actually not properly compensate them and look after their interests in the long term.

For example, staying in the statutory scheme will allow workers to take advantage of new aids and appliances that might not come on the market or be available—they may simply be science fiction—when the judge makes the first decision. I have often used the hypothetical that a range of things are happening in prosthetics now. Aids and appliances which may be science fiction now, at the time a judge makes a decision for a 25-year-old worker, but which may become available in 20 years time will be available to that worker under the statutory scheme. A common law payment of $200,000 or $880,000 to a worker now will be long gone by the time such aids and appliances, which may improve the worker's life, become available under the statutory scheme that is put in place.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.01 p.m.]: The Minister's contribution deserves a response. It seems that the Minister is determined to discourage people from seeking common law damages. If a wonderful new prosthesis comes on the market, people who have taken a lump sum payment will be immensely discriminated against. Indeed, if any attempts is being made to provide justice, the election should at least have some sense of equality. The common law should have an upside, apart from providing some sort of residual allowance. The idea that workers will be actively discouraged from getting a fair deal seems completely against any principle this Government should have.

Amendment negatived.

Ms LEE RHIANNON [10.02 p.m.]: I move Greens amendment No 7:

No. 7 Page 6, schedule 1.1 [7], proposed section 151H (1), lines 24-27. Omit all words on those lines. Insert instead:

151H Threshold for recovery of damages

(1) No damages may be awarded unless the injury results:

(a) in the death of the worker, or

(b) in a degree of permanent impairment of the injured worker that is at least 10%, or

(c) in the worker suffering a 40% or greater impairment in earning capacity and any one or more of the following:

(i) permanent and serious impairment or loss of body function, or

(ii) permanent and serious disfigurement,

(iii) permanent and severe mental or behavioural disturbance or disorder,

(iv) loss of a foetus.

This is an alternative gateway to common law. It is a means to strengthen the common law, which is so badly needed. At the outset I remind honourable members of a comment I made during my contribution to the second reading debate: At least Mr Kennett, the Liberal Premier of Victoria, had the guts to kill off common law outright. The Minister said that he is being open and up-front. However, the Government is not being open and up-front about its intentions in terms of common law. This amendment inserts a narrative test as an alternative secondary pathway to common law. This provision has been adopted from the Victorian legislation—legislation moved by colleagues of the Government.

Workers will be entitled to take a common law action if they experience a 40 per cent or greater impairment to earning capacity and any one of the following: permanent and serious impairment or loss of body function; permanent and serious disfigurement; permanent, severe mental or behavioural disturbance or disorder; or loss of a foetus. This test would act as an alternative gateway. It would provide judges with discretion to act independently of the guidelines—something that the Greens believe is important in terms of making the system flexible and fair. This amendment also reduces the barrier to 10 per cent for damages. Time and time again experts working in this field have said that 10 per cent is what the threshold should be; it should be no higher than 10 per cent. This narrative test will provide greater stability in the scheme so that it can meet the needs of injured workers.

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) [10.04 p.m.]: The second gateway to common law for economic loss was introduced in 1989 at the time of the reinstatement of common law benefits. Under the current system, in order

to access economic loss damages, workers must show that they have a serious injury. "Serious injury" is defined as an injury that entitles the worker to 25 per cent of the maximum under the Table of Disabilities in the no-fault scheme, which is the first gateway, or an entitlement to non-economic loss of $60,450, which is the second gateway.

An individual's entitlement to non-economic loss is assessed by the court in its discretion, although the amount must be determined by reference to the most serious case. The report of the Common Law Inquiry into Workers Compensation Common Law Matters—the common law inquiry—noted the decision in the case of *Dell v Dalton* in 1991 which, although it concerned non-economic loss under the Motor Accidents Act, has since been applied in the workers compensation context. This case can be seen to be relaxing the statutory intent relating to assessment of non-economic loss, which is the basis of the second gateway. Common law was only ever intended to be available to those whose injuries were serious and where fault could be demonstrated.

The main purpose of the no-fault statutory scheme is to provide support to the overwhelming majority of workers, regardless of fault. Only about 2,000 workers make a common law claim each year, whereas 160,000 claims are made under the no-fault scheme. The ability of the no-fault scheme to achieve its broad goals is being placed in serious jeopardy as a result of the erosion in the second gateway since 1989. About 500 common law claims are being made per month, and this is simply not sustainable. The common law inquiry found that wherever economic, narrative or subjective thresholds have been tried, they have created scope for an interpretation leading to financial pressure on the scheme. The common law inquiry report stated:

> Each time the stability of the NSW scheme is threatened, the fundamental benefits which compromise all that the overwhelming majority of injured workers receive by way of support and compensation after work-related injury, are put at serious risk.

For this reason the Government does not support the retention of a second gateway.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 6

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

Noes, 26

Ms Burnswoods	Mr Harwin	Mr Ryan
Mr Costa	Mr Hatzistergos	Ms Saffin
Mr Della Bosca	Mr M. I. Jones	Mr Samios
Mr Dyer	Mr Lynn	Mrs Sham-Ho
Ms Fazio	Mr Macdonald	Mr Tsang
Mrs Forsythe	Mr Moppett	Mr West
Mr Gallacher	Reverend Nile	*Tellers,*
Miss Gardiner	Mr Oldfield	Mr Jobling
Mr Gay	Mr Pearce	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Ms LEE RHIANNON [10.14 p.m.], by leave: I move Greens amendments Nos 8, 9 and 23 in globo:

No. 8 Page 6, schedule 1.1 [7], proposed section 151H (1), line 31. Insert "Physical and psychological (or psychiatric) impairments that result from the same injury are to be assessed together." after "together.".

No. 9 Pages 6 and 7, schedule 1.1 [7], proposed section 151H (2)-(5), line 32 on page 6 to line 24 on page 7. Omit all words on those lines. Insert instead:

(2) The degree of permanent impairment that results from an injury is to be assessed as provided by Part 7 (Medical assessment) of Chapter 7 of the 1998 Act.

No. 23 Page 20, schedule 1.2 [7]. Insert after line 14:

[9] Section 322 (2)

Insert at the end of section 322 (2):

Physical and psychological (or psychiatric) impairments that result from the same injury are to be assessed together.

These amendments deal with the combining of psychological and physical impairment. The bill currently discriminates against psychological injuries by not allowing the degree of psychological impairment to be added to the degree of physical impairment. This is a major shortcoming of the bill and it is unfair. The amendments would remove the definition of secondary psychological injury and make it clear that the degree of physical and psychological impairment is to be assessed jointly. Putting physical and psychological impairment together is just a small way to improve the bill, but it would go a long way to making a difference to injured workers in allowing more injured workers to be compensated fairly. Together with amendment No. 7, the amendments reduce the barrier of damages to 10 per cent. I commend the amendments to the Committee.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.15 p.m.]: Sometimes when amendments are moved I do not see just words, which are fairly dull, but I see patients of mine who could well be affected by them. These amendments relate to the circumstances of a patient who worked for two employers. She worked for each of them for 20 hours a week. One refused to pay compensation for her wrist injury because she had a congenital deformity. The other agreed to pay, so she had half compensation from the day she was injured. The situation was extremely traumatic. Initially she was lucky enough to have her husband to support her. Nevertheless, she became extremely depressed. She had unsuccessful surgery on her painful wrist, which resulted in the wrist becoming weak as well as painful. After her husband died of a heart attack she became so depressed that she was scheduled to a psychiatric hospital. She was suicidal for some time and then developed a drinking problem. She can still do something with her painful right hand and therefore may not get over the threshold, but if her psychological damage and extreme depression were added to her injuries she would undoubtedly pass any threshold. I am not sure whether she would be over the threshold with her individual injuries, depending again on definitions. These are significant amendments that should be supported.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.17 p.m.]: The rationale for prohibiting the combining of physical and psychological injuries is that physical injuries which would not nearly be within the range of the threshold—bearing in mind all of these provisions deal with particular thresholds—would artificially increase the physical injuries for the purpose of exceeding the relevant threshold. Psychological overlay, which is a way of describing this condition, has been identified in many jurisdictions as a particular problem. Queensland prevents the combining of physical and psychological injuries to exceed thresholds. Victoria and Tasmania prevent a secondary psychological injury being combined with a physical injury to exceed a relevant threshold. The amendments are opposed.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 4

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

Noes, 28

Mr Breen	Mr Harwin	Ms Saffin
Ms Burnswoods	Mr Hatzistergos	Mr Samios
Mr Costa	Mr M. I. Jones	Mrs Sham-Ho
Mr Della Bosca	Mr Lynn	Mr Tsang
Mr Dyer	Mr Macdonald	Mr West
Ms Fazio	Mr Moppett	Mr Wong
Mrs Forsythe	Reverend Nile	
Mr Gallacher	Mr Oldfield	*Tellers,*
Miss Gardiner	Mr Pearce	Mr Jobling
Mr Gay	Mr Ryan	Mr Primrose

Question resolved in the negative.

Amendments negatived.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [10.24 p.m.]: I move:

Page 6, schedule 1.1 [7], proposed section 151H. Insert after line 31:

(2) Subsection (1) does not apply to the awarding of damages in respect of a psychological injury received by a person in the course of the performance of the person's duties as:

(a) a police officer, or

(b) an ambulance officer employed by the Ambulance Service and engaged in the provision of ambulance services, or

(c) a firefighter (being a member of a fire brigade under the *Fire Brigades Act 1989* or a rural fire brigade under the *Rural Fires Act 1997*).

During the second reading debate I alluded to this amendment, which has come about as a result of discussions I have had with a number of concerned individuals who represent members of the three emergency service organisations in this State: the New South Wales Police Service, the Ambulance Service of New South Wales Fire Brigades New South Wales. The amendment recognises the extremely dangerous nature and uncertainty associated with the work performed by those three groups of officers. The work they perform by far exceeds nearly every other occupation in New South Wales with respect to danger and uncertainty. I do not think many honourable members in this Chamber would disagree with the suggestion that the contribution made by ambulance officers, firefighters and members of the Police Service in maintaining safety and upholding the law in New South Wales is unparalleled.

The amendment recognises the nature of their work and the significant impact of psychological injury on emergency services officers, who invariably are the first people in attendance at the most serious and most horrific crime scenes—scenes which would be unimaginable to many honourable members in this Chamber and, indeed, to many in society. Emergency services officers attend emergencies first. They are the ones who have to clean up the scene, look after the wounded and prepare the dead for transportation. They also quite often have to face the most horrific situations when they are seriously threatened by the dangers associated with the work they perform. Some years ago an ambulance officer friend of mine went to Wynyard Railway Station, where a fellow had fallen in front of a train. I met him after work and he told me that he had had to walk down the tunnel adjacent to Wynyard railway station to retrieve the person's head, which had been removed in the accident. That happened 20 years ago, and I have never forgotten it. The ambulance officer was only in his very early twenties. It would surprise nobody to learn that he is no longer a member of the Ambulance Service—in fact, he is off work and in receipt of a pension.

This amendment is worthy and fits in very neatly with the legislation that has been prepared by the Government in the context of workers compensation reforms. In fact, the amendment will maintain the threshold of 15 per cent permanent impairment and it does not affect the threshold in relation to any other worker. The amendment most certainly recognises the special needs of police officers, ambulance officers and firefighters in a way that ensures they are protected. If the amendment is accepted, those three groups of individuals, for psychological injury only, will have access to common law without being impinged upon or in any way having their rights to common law remedies infringed by the threshold of 15 per cent impairment.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.28 p.m.]: At the outset I congratulate the Leader of the Opposition on a very good example of dishing the Whigs. The Government has improved the situation of emergency services officers immensely by proposed changes in laws that relate to emergency service workers. The very point made by the Leader of the Opposition is the critical point—namely, the nature of the work of emergency service workers. There are all sorts of reasons why the normal course of their duties involves some horrendous tasks that many of us would flinch at having to undertake. Because they are involved in those types of duties, they do not necessarily involve an easy case of negligence. The point about the changes proposed by the Government is that they already massively improve the lot of emergency services workers compared with the current system.

Honourable members seem to keep getting mixed up in thinking about what an ideal system would be. The Hon. Dr Arthur Chesterfield-Evans has been designing in his mind ideal injury management systems. The Leader of the Opposition has been designing an ideal set of outcomes for emergency services workers. The Hon. Lee Rhiannon and the Hon. Ian Cohen also envisage all sorts of ideal situations. However, we are talking about a current totally unsatisfactory system and the Government making changes that will effect vast improvements for emergency services workers. The Leader of the Opposition in this Chamber has taken things one step further by saying that we will not apply the threshold for emergency services workers.

The first problem associated with the suggestion is that people involved in emergency service work have to cope with all sorts of horrendous situations from time to time, but WorkCover inspectors also have to cope with horrendous situations, such as visiting the sites of massive injuries and going to all sorts of locations. Department of Industrial Relations [DIR] inspectors also have to deal with all sorts of situations. They are just two categories, both of which come within my portfolio. Medical doctors in hospitals, nurses and a whole range of people are involved in emergency work. I can also think of a number of situations in which train drivers witness horrendous events. If the Leader of the Opposition is able to give me a fair boundary I suppose we could begin to have a realistic debate. However, he has picked only three categories. As I said earlier, the Leader of the Opposition ought to be congratulated on some tidy dishing of the Whigs, but not necessarily on anything resembling good policy or good policy outcomes.

The Government is already immensely improving the lot of emergency services workers. The Leader of the Opposition knows that for all sorts of reasons his proposition is unsustainable. He also knows the original fears associated with the permanent impairment rating scale [PIRS] and the issues that have already been widely canvassed related to that scale. I think I have satisfied the Leader of the Opposition—as I have been able to satisfy a number of other critics of the proposed scheme—that the PIRS is infinitely better than forcing people to rely on the untidy process of common law. The PIRS will ensure that people who are subjected to psychiatric injury as a result of horrific events will be adequately compensated. Those people will reach those thresholds and they will be dealt with in a way that is infinitely superior to the currently unsatisfactory way in which people are treated.

The current scheme does not deal with these people under a statutory scheme—they have to resort to the common law. If they cannot prove negligence, the claims will be dismissed outright to begin with. Moreover, even if they can prove negligence, they will have to undertake a long, difficult and arduous court case to receive an award of damages. Last, but not least, I would like to leave the Committee with a thought before honourable members consider how they will vote on this amendment. It is not WorkCover's deficit that I am defending, if I am defending anything in financial terms. I think the Leader of the Opposition knows that he is referring to the Treasury Managed Fund. None of the people to whom the Leader of the Opposition has referred is compensated out of the premiums that are paid by employers out of WorkCover's operations. WorkCover regulates the system of dispute resolution but, as the Leader of the Opposition knows, he is referring to general revenue. He is the very honourable member who has been attacking me in this place, when he has got around to it, during question time.

The Hon. Michael Gallacher: No, I haven't.

The Hon. JOHN DELLA BOSCA: Yes, he has.

The Hon. Michael Gallacher: It is constructive criticism.

The Hon. JOHN DELLA BOSCA: His "constructive criticism" has included questions about what I am doing about the WorkCover deficit and its impact on the number of Police Service officers that people can

have on the streets and the number of doctors that people can have in the hospitals. I have been telling the Leader of the Opposition what the Government intends to do about the WorkCover deficit. I have been explaining the WorkCover deficit to him and how compliance with his demands would affect it. This amendment will directly affect the bottom line of the budget. This provision would affect the Government's financial capacity to put police on the streets and to perform other government services that are required. I warn the Committee of the attraction of the overly simplistic solution. The suggestion made by the Leader of the Opposition is not the solution to the problem. The scheme he is proposing will undermine the financial capacity of the Treasury Managed Fund to continue to service emergency workers and other government personnel, and also guarantees that the situation constantly complained of by the Leader of the Opposition is brought into existence.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 14

Dr Chesterfield-Evans	Mr Gay	Mr Ryan
Mr Cohen	Mr Harwin	Mr Samios
Mrs Forsythe	Mr Oldfield	*Tellers,*
Mr Gallacher	Mr Pearce	Mr Jobling
Miss Gardiner	Ms Rhiannon	Mr Moppett

Noes, 17

Dr Burgmann	Mr M. I. Jones	Mr Tsang
Ms Burnswoods	Mr R. S. L. Jones	Mr West
Mr Costa	Mr Macdonald	Dr Wong
Mr Della Bosca	Reverend Nile	*Tellers,*
Mr Dyer	Ms Saffin	Ms Fazio
Mr Hatzistergos	Mrs Sham-Ho	Mr Primrose

Pairs

Mr Colless	Mr Egan
Mr Lynn	Mr Obeid
Dr Pezzutti	Ms Tebbutt

Question resolved in the negative.

Amendment negatived.

Ms LEE RHIANNON [10.41 p.m.], by leave: I move Greens amendments Nos 14 and 24 in globo:

No. 14 Page 12, schedule 1.2 [6], proposed section 314 (1), line 25. Insert ", but must make the assessment within 12 months after the referral for assessment" after "fully ascertainable".

No. 24 Page 20, schedule 1.2. Insert after line 19:

[11] Section 322 (5)

Insert after section 322 (4):

(5) Despite subsection (4), the approved medical specialist must make an assessment of the degree of permanent impairment of an injured worker within 12 months after the referral of the matter for assessment.

The amendments to proposed sections 313 and 314 would enable court proceedings to be delayed if the approved medical specialist uses section 322 to decline to make an assessment on the ground that the degree of permanent injury is not yet fully ascertainable, that is, the injury has not been stabilised. The amendments address potential delays caused by threshold disputes and provide a mechanism by which to get over that. They would ensure that after a 12-month period an assessment would have to be made. The Greens believe that the amendments will improve the bill, and I commend them to the Committee.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.42 p.m.]: The Government does not support the amendments. It is a waste of the Workers Compensation Commission's resources to force it to carry out an assessment if the injury has not stabilised. It might also disadvantage a worker seeking compensation under the no-fault scheme, because the worker could end up being undercompensated if the full extent of his or her injury is identified.

Amendments negatived.

Ms LEE RHIANNON [10.43 p.m.], by leave: I move Greens amendments Nos 15, 16, 17, 18, 19 and 20 in globo:

No. 15 Page 13, schedule 1.2 [6], proposed section 315 (1), line 7. Insert "medical and expert" before "evidence".

No. 16 Page 14, schedule 1.2 [6], proposed section 316 (1), line 1. Insert "medical and expert" before "evidence".

No. 17 Page 14, schedule 1.2 [6], proposed section 317 (2) and (3), lines 22-30. Omit all words on those lines. Insert instead:

(2) A dispute as to whether a pre-filing statement served by the claimant is defective may be referred to a Presidential member for determination.

(3) The Presidential member to whom the dispute is referred may give a direction to the claimant as to the action necessary to cure any defect in the pre-filing statement served by the claimant. If the claimant fails to comply with the direction within the time allowed for compliance, the pre-filing statement served by the claimant is taken not to have been served.

No. 18 Page 15, schedule 1.2 [6], proposed section 318 (2), line 30. Omit "and". Insert instead "or".

No. 19 Page 15, schedule 1.2 [6], proposed section 318 (2). Insert at the end of line 32:

, or

(c) the granting of leave is necessary to do justice between the parties.

No. 20 Page 15, schedule 1.2 [6], proposed section 318 (3), line 33. Omit "this section". Insert instead "subsection (1)".

The bill's changes to pre-filing statements could reduce the ability of an injured worker or a defendant to develop his or her case, and the amendments address that problem. Proposed sections 315 and 316 require pre-filing statements to reveal all evidence to be used in a court case. Proposed section 318 limits the ability to present evidence other than that contained in the pre-filing statement. This clearly limits the ability of injured workers to argue their case. It is also a major departure from the current situation, which requires only medical and expert reports and the provision of material particulars of other matters of fact to be relied upon. Other evidence, including lay evidence, is only required at the time of the court hearing.

The proposed changes will give the other side a free shot, a real advantage, at the non-medical and non-expert evidence. The amendments would limit the evidence required to be included by inserting "medical and expert" before the word "evidence", to limit the pre-filing statements of both the claimant and the defendant to the matters that are required for the defendant to prepare his or her case. When one reads what the Government is doing on this score, one sees how the system is loaded against injured workers. If the bill is not amended in the way proposed by the Greens, we will end up with a system that seriously limits the ability of workers to bring evidence to argue their case.

Proposed section 317 gives the registrar the power to resolve disputes with respect to defective pre-filing statements. The registrar is a bureaucrat and not a judicial officer and therefore lacks the independence and expertise required to solve disputes fairly and without prejudice. The amendment to that section will give that power to a presidential member of the commission who is a judicial officer with the appropriate degree of independence.

Amendments Nos 18 and 19 give the courts greater discretion to grant leave to file a statement of claim that is different from the pre-filing statement, or to introduce evidence that is not contained in a pre-filing statement. In particular, the amendments create greater discretion for the court to grant leave when it is necessary to provide justice between the parties. Amendment No. 20 specifies the circumstances under which the court may grant leave without affecting the range of matters that can be changed by regulation.

The Greens believe that these important amendments would enable workers and the people who represent them when they go to court to argue their case more effectively. If the amendments are blocked—and we have a strong feeling that they will be blocked—one wonders about the motives of the Labor Government in bringing forward this legislation.

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) [10.47 p.m.]: The serving at the pre-filing stage of all evidence to be relied upon by claimants and defendants, not just medical and expert evidence, is intended to ensure that the parties prepare their cases early and have a real opportunity to settle them without the need to commence court proceedings.

The requirement that parties exchange as much information as possible at the earliest possible time and respond promptly to offers of settlement will allow the settlement of matters without the necessity to file proceedings in the court. The serving by claimants and defendants of only medical and expert evidence at the pre-filing stage would not allow the parties to mediate the matter and to settle it prior to commencing court proceedings.

The Common Law Inquiry Report observed from evidence presented that common law claims were more than twice as expensive to process compared with statutory benefit claims. The report also noted and accepted that the financial position of the scheme required that savings be made, and that "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's recommendation that a pre-litigation process, including that all evidence to be relied upon be served at the pre-filing stage, be introduced for common law work-injury damages claims. The Government opposes the amendments.

Amendments negatived.

Ms LEE RHIANNON [10.48 p.m.], by leave: I move Greens amendments Nos 21 and 25 in globo:

No. 21 Page 20, schedule 1.2 [7], lines 4-6. Omit all words on those lines.

No. 25 Page 21, schedule 1.2. Insert after line 2:

[14] Section 326 (1) (b)

Omit the paragraph.

The bill's definition of a medical dispute, as set out in proposed section 319, requires an approved medical specialist to make a finding about the degree to which a previous injury or pre-existing condition contributes to an impairment. This would require the approved medical specialist to make a finding of causation, which is not a medical matter and hence not something that a medical specialist is qualified or trained to comment upon. The amendments delete the need for this by removing the reference to pre-existing conditions. The Greens believe that these matters should be resolved in the court, and adopting the amendments would facilitate that. I commend the amendments to the Committee.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.49 p.m.]: The Government opposes the amendments.

Amendments negatived.

Ms LEE RHIANNON [10.49 p.m.]: I move Greens amendment No. 22:

No. 22 Page 20, schedule 1.2 [7]. Insert after line 14:

[9] Section 322 (1A)

Insert after section 322 (1):

(1A) Despite subsection (1), the assessment of the degree of permanent impairment of an injured worker is, to the extent that it concerns a psychological or psychiatric injury, to be made taking into account pre-morbid functioning as used by the Australian Psychological Society/Global Assessment of Functioning Guidelines for permanent psychological impairment and must not take into account the Psychiatric Impairment Rating Scale Guidelines or other guidelines that use the median to statistically mute ratings.

This amendment outlines the proposal to replace the PIRS guidelines with the global assessment function [GAF] system, which I spoke about during the second reading debate. Assessment of psychological impairment in this bill relies on the psychiatric injury rating scale, known as PIRS. This scale has been severely criticised by many psychologists as being biased, unreliable and open to abuse. It is unlikely to produce repeatable outcomes, and

by using the median measure of a set of individual ratings it mutes the extremes of injury impairment. In short, it is inappropriate. As we know, injuries come in all shapes and forms. We need a system that is flexible and able to accommodate those variables. That is not achieved with PIRS.

This amendment will require all assessments of permanent psychological or psychiatric impairment of an injured worker to be based on the GAF guidelines as used by the Australian Psychological Society and as recommended by the New South Wales Branch of the Royal Australian and New Zealand College of Psychiatrists. We have an extraordinary situation at the moment where the only psychologists the Government is involving are forensic psychologists. It is quite extraordinary that the main peak bodies of psychologists in this State have been excluded. I commend this amendment as it could provide some balance in the present system.

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) [10.51 p.m.]: I have already outlined the reasons why the Government supports PIRS, the basis for it, and why the Government believes it is superior to the GAF system proposed by Ms Lee Rhiannon. The Government opposes the amendment.

Amendment negatived.

Schedule 1 agreed to.

Schedule 2

Ms LEE RHIANNON [10.52 p.m.], by leave: I move Greens amendments Nos 26, 27 and 28 in globo:

No. 26 Page 24, schedule 2 [2], proposed section 65A (3), line 24. Omit "15%". Insert instead "7.5%".

No. 27 Page 25, schedule 2 [4], line 28. Omit "10%". Insert instead "7.5%".

No. 28 Page 26, schedule 2 [5], line 4. Omit "15%". Insert instead "7.5%".

These amendments address lump sum compensation. The bill proposes whole-of-body impairment thresholds of 15 per cent for a primary psychological injury and 10 per cent for a physical injury for eligibility for lump sum compensation. There is no reason why a psychological injury should have a higher threshold than a physical injury, given that both are measured on the basis of impairment. Further, the threshold for physical injury is too high to allow for reasonable access to lump sum compensation. These amendments establish a more reasonable threshold of 7.5 per cent for both types of injury. I commend the amendments to the Committee.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.53 p.m.]: As has been said earlier in relation to thresholds, section 66 of the Workers Compensation Legislation Amendment Act 2001 established for the first time the statutory scheme and the right to lump sum compensation for permanent impairment arising from primary psychological injury. I emphasise that the Government is vastly improving the current situation. We are not moving from a great system to an inferior system; we are moving from a system that does not deal with these problems at all to one that deals with them in a fair and proper way. The need has arisen from the notion that some variation in psychological function will still place a person within the normal range. The Government is proposing a threshold of 15 per cent for a permanent impairment arising from a psychiatric or psychological injury.

In determining this level the Government has received advice from a range of sources, including eminent psychiatrists who are the authors of the scale proposed for the measurement of permanent impairment. Only time and the use of the scale will tell whether it turns out to be the correct level. Lowering the threshold to a random number such as 7.5 per cent will result in a situation where those who have an impairment but can generally function quite normally will receive compensation. This will have a significant cost effect, and it will also be unfair in its allocation of the resources of the scheme to those who most require them. Also, in relation to the psychological threshold, I reiterate what I said in reply to the second reading debate: that it is the Government's clear intention to ensure that it is in a position to carefully review and monitor the way in which PIRS and the related provisions will operate.

Amendments negatived.

Schedule 2 agreed to.

Schedule 3 agreed to.

Schedule 4

Reverend the Hon. FRED NILE [10.55 p.m.]: I move:

Page 34, schedule 4 [14], proposed clause 11, lines 26 and 31. Omit "1 February" wherever occurring. Insert instead "31 March".

Honourable members will be aware that, arising from this legislation, 4,000 commutations have been lodged with the court—an excessive number. Therefore it is important to allow further time for the claims to be processed. The bill states that there must be a determination of such an application, but only so as to authorise the determination of such an application and only so as to authorise the commutation of a liability before 1 February 2002. An extension of two months will allow time to clear the backlog of cases. This is a reasonable amendment and I commend it to the Committee.

Ms LEE RHIANNON [10.57 p.m.]: This could be called the wan tok amendment, but Mr Charlie Lynn is not in the Chamber to explain what that means. It is payback time, which is what we see time and again.

The Hon. Michael Costa: It is a conspiracy.

Ms LEE RHIANNON: It is not a conspiracy at all. Reverend Fred Nile has done the bidding of the Government, he has voted nicely, and now he is being given a bit of the action. Reverend Fred Nile had the opportunity to stand by police officers—members of society of whom he speaks highly time and again—and do the right thing by them, but he could not even bring himself to vote for them. He could have shown a bit of decency but, no, when the Government needs the numbers—

Reverend the Hon. Fred Nile: Point of order: I ask that the honourable member speak to the amendment, not to an amendment that has already been passed by the Committee.

The CHAIRMAN: Order! It was difficult for me to hear what the honourable member was speaking to because of disorder in the Committee. Ms Lee Rhiannon has the call and I presume she is speaking to the amendment.

Ms LEE RHIANNON: My comments are relevant to this amendment. I think the boys in this Chamber are getting really wussy. They carry on and say whatever they like in debate, but when I say something that is relevant they cannot take it. Reverend Fred Nile should have some backbone. I am looking forward to talking about Christian fundamental terrorism in the United States of America, which is an issue that must be dealt with. This amendment is of total marginal utility. It again gives Reverend the Hon. Fred Nile a cut of the action. The boys have done well. Congratulations!

Amendment agreed to.

Schedule 4 as amended agreed to.

Schedule 5 agreed to.

Schedule 6

Question—That the schedule be agreed to—put.

The Committee divided.

Ayes, 19

Dr Burgmann	Mr M. I. Jones	Mrs Sham-Ho
Ms Burnswoods	Mr R. S. L. Jones	Mr Tsang
Dr Chesterfield-Evans	Mr Macdonald	Mr West
Mr Costa	Reverend Nile	
Mr Della Bosca	Mr Oldfield	*Tellers,*
Mr Dyer	Ms Rhiannon	Ms Fazio
Mr Hatzistergos	Ms Saffin	Mr Primrose

Noes, 11

Mrs Forsythe	Mr Lynn	Mr Wong
Mr Gallacher	Mr Pearce	*Tellers,*
Miss Gardiner	Mr Ryan	Mr Jobling
Mr Gay	Mr Samios	Mr Moppett

Pairs

Mr Egan	Dr Pezzutti
Mr Obeid	Mr Harwin
Ms Tebbutt	Mr Colless

Question resolved in the affirmative.

Schedule 6 agreed to.

Schedule 7 agreed to.

Schedule 8

Ms LEE RHIANNON [11.07 p.m.], by leave: I move Greens amendments Nos 32 to 39 in globo:

No. 32 Page 49, schedule 8, proposed section 87EA, lines 8 and 9. Omit "the Authority is satisfied that, and certifies that it is satisfied that".

No. 33 Page 49, schedule 8, proposed section 87EA (1) (a), lines 10-13. Omit all words on those lines.

No. 34 Page 49, schedule 8, proposed section 87EA (1) (d), lines 20-22. Omit all words on those lines.

No. 35 Page 49, schedule 8, proposed section 87EA (1) (e), lines 23-25. Omit all words on those lines.

No. 36 Page 50, schedule 8, proposed section 87EA (1) (g), lines 1-3. Omit all words on those lines.

No. 37 Page 50, schedule 8, proposed section 87EA (2), lines 4-7. Omit all words on those lines.

No. 38 Page 50, schedule 8, proposed section 87EA (3), lines 8-12. Omit all words on those lines.

No. 39 Page 50, schedule 8, proposed section 87EA (4), lines 13-15. Omit all words on those lines.

Amendment No. 32 deletes the requirement that WorkCover certifies the preconditions for commutation. This will give WorkCover too much power over the rights of the injured worker to commute a liability into a lump sum, which could be in the best interests of the worker. WorkCover's record in matters to do with workers is poor, and we believe that it should not be given this power. Amendments Nos 33 to 39 delete the reasons for denying a commutation. It makes no sense to limit commutation to the most seriously injured workers. Commutation allows many less seriously injured workers to return to work sooner and start a new life. I commend these amendments to the Committee. They will go a long way to improve a bill that is seriously flawed.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.08 p.m.]: The availability of unrestricted commutations has resulted in significant losses for the scheme. Research carried out by PricewaterhouseCoopers has shown that instead of decreasing the tail, the availability of a lump sum has resulted in a situation in which those seeking a commutation will often have no ongoing entitlement to compensation. That is why the Government has introduced strict criteria in relation to commutations. The criteria are designed to ensure that there is an ongoing entitlement to weekly benefits and that all injury management opportunities have been explored. The approval function is necessary to ensure that the criteria are strictly adhered to.

Without this approval function, insurers would commute claims without ensuring compliance with the criteria. WorkCover approval formed a part of the pre-1988 system in relation to commutations. Since that function was removed on the recommendation of the Advisory Council, the scheme has deteriorated and the problem with commutations has emerged. A 15 per cent threshold for access to commutation has been accepted because those above the threshold are less likely to benefit from injury management and rehabilitation. Those

below the threshold are generally only partially incapacitated and have the capacity to return to work. Commutations bundle up a worker's future entitlements to weekly benefits. If the threshold is removed the current situation will be allowed to continue and those with no ongoing entitlement to weekly benefits will access commutations. This will result in significant losses to the scheme.

Amendments negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.10 p.m.]: I move:

Page 50, schedule 8, proposed section 87EA (5), line 17. Insert "or in respect of a liability of a self-insurer" after "the former Act".

This amendment has the effect of allowing self-insurers to calculate commutations if they think that is in their financial interests. I was interested to hear the Minister's response to the last set of Greens amendments that sought to increase the amount of commutations available. He basically said that they were financially detrimental to the WorkCover scheme. Interestingly, the Minister did not say that they were financially detrimental to the worker, which surprised me a little. Therefore, I presume that commutations will be banned to benefit WorkCover's finances and that the Minister has made that decision on behalf of the scheme. He may make that financial decision and instruct WorkCover not to agree to commutations.

However, self-insurers have written to me, and I believe to every other honourable member, to say that they would like to continue commutations as part of their financial management. In other words, they think commutations are financially advantageous to them. The Law Society believes commutations are financially advantageous to some of its clients and has supported my amendment by asking for the continuation of the commutation system. The New South Wales Labor Council, which acts in the interests of workers, says that some workers want commutations. Therefore, there is some pressure to retain commutations. If this decision is being made for the benefit of WorkCover's finances, it should be made by the WorkCover board at the direction of the Minister or of WorkCover. This decision should not be made for self-insurers, who should be allowed to decide their own financial arrangements.

The pool of money involved in self-insurance is separate from the pool of money in WorkCover—they are administratively distinct. Therefore, if the Minister is making a managerial, financial decision on behalf of WorkCover he should instruct WorkCover to do what it should with regard to commutations but he should not prevent self-insurers from making their own decisions. This amendment is fundamentally about the governance of self-insurers, who are managing their schemes far more efficiently than WorkCover and should be allowed to continue to do so.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.13 p.m.]: The Government does not support the amendment. Why should a worker's entitlements be different just because that worker happens to work for a self-insured employer rather than a managed-fund employer? The new arrangements in relation to commutations allow for commutations when all opportunities for injury management and return to work have been explored. This will encourage a focus on recovery of the injured worker rather than a focus on lump sum compensation, which often interferes with early, good claims and injury management.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.13 p.m.]: The Opposition has considered the amendment moved by the Hon. Dr Arthur Chesterfield-Evans and we spoke to self-insurers as recently as a couple of hours ago. They expressed their concerns about the commutation changes and how they will be affected. There is a considerable body of opinion that self-insurers could experience a 20 per cent increase in premiums. Therefore, this amendment appears to be fair and reasonable for those organisations that are fortunate enough to manage their own insurance. As the Hon. Dr Arthur Chesterfield-Evans correctly pointed out, it is their money and they are managing it efficiently in a competitive market. Therefore, it is only fair that Parliament should continue to allow self-insurers the autonomy that they have enjoyed until now.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 16

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

Noes, 15

Dr Burgmann	Mr M. I. Jones	Mr West
Ms Burnswoods	Mr Macdonald	
Mr Costa	Reverend Nile	
Mr Della Bosca	Ms Saffin	*Tellers,*
Mr Dyer	Mrs Sham-Ho	Ms Fazio
Mr Hatzistergos	Mr Tsang	Mr Primrose

Pairs

Mr Colless	Mr Egan
Miss Gardiner	Mr Obeid
Dr Pezzutti	Ms Tebbutt

Question resolved in the affirmative.

Amendment agreed to.

Schedule 8 as amended agreed to.

Schedule 9 agreed to.

Schedule 10

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.22 p.m.]: I intend to move an amendment, but before I do I bring to the attention of the Committee advice received by us recently from the Clerks. Given that various aspects of the previous bill have not been proclaimed, will the Minister tell the Committee whether the amendment I am about to move is in order?

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.23 p.m.]: I am advised by the Acting Clerk that the amendment the honourable member is about to move is perfectly in order. He may proceed.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.23 p.m.]: I also ask the Minister whether he is in a position to inform the Committee whether clause 248A of the previous bill, which relates to the review of the Workers Compensation Further Amendment Act, was proclaimed?

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.24 p.m.]: I am advised that the answer to the Leader of the Opposition's question is yes, but it makes no difference to the validity of his amendment.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.24 p.m.]: The advice we have been given is that the part we are trying to amend has not been proclaimed. Of course, that makes no difference as to whether we can move an amendment, but it is an indication that an amendment made to a previous bill in this Chamber has not been proclaimed. I ask the Minister to ascertain from his advisers whether the entire bill that passed through this place on a previous occasion has been proclaimed, particularly the provision relating to the review. We have been given unbiased advice by the Clerks that that particular part of the bill has not been proclaimed.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.25 p.m.]: The answer is no.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.25 p.m.]: Would the Minister mind revealing to the Committee why it has not been proclaimed?

The Hon. Duncan Gay: And how much of the bill was not proclaimed.

The Hon. MICHAEL GALLACHER: Before the Minister answers that question, might I remind honourable members what we are talking about. On 29 June in this Chamber there was considerable debate about the necessity for a review of this legislation and who would conduct such a review. Honourable members might recall that the view put by the Opposition on that occasion was that the review should be conducted by the Auditor-General because the original bill provided that the Minister would conduct his own review at the end of a 12-month period. Of course, that provision was subsequently amended with the support of members of the crossbench. If I recall correctly, the Hon. Richard Jones suggested that Mr Parry of the Independent Pricing and Regulatory Tribunal [IPART] should conduct the independent review of the legislation. We were all promised that such a review would take place. I remind honourable members that the Minister said on that occasion:

> … the Government is prepared to give a commitment that it will approach Mr Tom Parry to conduct an appropriate review, precisely consistent with the general thrust of the amendment of the Leader of the Opposition.

This Chamber was given an undertaking that that legislation would be proclaimed and reviewed. There has been no such proclamation. We have been misled. I ask the Minister for Industrial Relations to explain why that bill was not proclaimed and what other parts of the legislation have not been proclaimed. Unless we are given an explanation from the Minister we are not prepared to allow this legislation to proceed any further this evening.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.28 p.m.]: I think I can clarify matters for the Leader of the Opposition and the Committee. The clauses of the bill that were required for the progressive implementation of the new scheme have been proclaimed. I am able to give a commitment now that all remaining provisions will commence on 1 January, and they will be proclaimed in time for them to commence on that date. I advise further that Mr Tom Parry has already been approached to conduct the inquiry spoken about during consideration of the original legislation.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.29 p.m.]: I now move my amendment, which relates to a review of the Act:

No. 1 Page 57, schedule 10.2. Insert after line 20:

[4] Section 248A Review of Act

Insert "and the *Workers Compensation Legislation Further Amendment Act 2001*" after "*Workers Compensation Legislation Amendment Act 2001"* in section 248A (1).

[5] Section 248A (2)

Omit the subsection. Insert instead:

(2) The review is to be undertaken as soon as possible after the period of 12 months from the date of assent to the *Workers Compensation Legislation Further Amendment Act 2001*, and is to be completed by 31 December 2002.

[6] Section 248A (3) (a)

Insert "before 27 February 2003" after "House of Parliament".

[7] Section 248A (4)

Insert "and before 27 February 2003" after "copy of the review".

Quite simply, I moved this amendment because of the answer that was given by the Minister about the Government's preparedness to be honest, open and accountable to members of this Chamber in relation to a review of this legislation. The amendment that I have moved is consistent with an amendment that was

circulated on 29 June during debate on this issue. This amendment will ensure that a review is conducted by 31 December 2002 and that the result of the review will be tabled in this Chamber, whether it is in or out of session, by 27 February 2003. When the review is concluded by Mr Barry we want all honourable members to have an opportunity to study it before the 2003 election campaign. We all want to know exactly what the Government is promising in relation to this scheme.

The amendment will not in any way impact upon the effectiveness of the legislation or on the Government's ability to achieve the outcomes that it promised in June regarding the second tranche of reform; nor will it have any impact on the debate that we have had this evening. However, the amendment will impact on the preparedness of this Government to be accountable to this Chamber—a true House of review.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.31 p.m.]: I support the amendment moved by the Leader of the Opposition, but I will go one step further. The Government has again been caught out at its favourite trick—proclaiming only what it wants to proclaim to prevent the Opposition from moving that consideration of this bill be adjourned. The Opposition requires an undertaking from the Minister for Industrial Relations, who has been caught out, that he will again address these issues if he is not going to proclaim this legislation. By proceeding through the democratic process in this place we accidentally established, through moving an amendment, that this tricky and devious Government has covered up once again. We need that undertaking from the Minister. If we do not get that undertaking we will move that consideration of this bill be adjourned.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.32 p.m.]: I gave what I thought was an unambiguous commitment only five minutes ago to the Leader of the Opposition. I again give that commitment to the Deputy Leader of the Opposition and to all other honourable members. The Government intends to proclaim all this legislation, including those matters that are currently under consideration relating to an Independent Pricing and Regulatory Review Tribunal inquiry to be undertaken, in time for the commencement of the scheme on 1 January. I have given honourable members an unambiguous commitment. I do not think I can take the matter any further than that.

Reverend the Hon. FRED NILE [11.33 p.m.]: As the Leader of the Opposition said earlier, 27 February will be right in the middle of the election campaign. When there are State elections, the Parliament usually adjourns in December and does not sit in December, January or February. Parliament would then resume either in late April or in early May after the election has been held—which, from memory, will be on 23 March. It would be better if the reports that were presented by the Independent Regulatory and Pricing Tribunal were considered by the newly elected government. I move an amendment to the amendment moved by the Leader of the Opposition in the following terms:

> That the amendment be amended by omitting the words "31 December 2002" or "27 February 2003", wherever occurring, and inserting instead "27 April 2003".

The Hon. Duncan Gay: What if they don't proclaim it?

Reverend the Hon. FRED NILE: That would be on the basis that the Government has proclaimed the legislation. We have the Minister's word that the Government will proclaim the legislation. We should avoid using this issue as a political football.

The Hon. JOHN JOBLING [11.35 p.m.]: Reverend the Hon. Fred Nile referred to those days on which we may or may not sit. I looked at the proposed sitting dates for the Legislative Assembly and the Legislative Council for the year 2002 and established that 3, 4 and 5 December are listed as draft sitting dates for the Legislative Council. I also established that 10, 11 and 12 December are reserve sitting days. So there is plenty of time for the Government to bring back this legislation and to ensure that it has been proclaimed. If the legislation has not been proclaimed, it will be far too late to do anything about it on some nebulous date in April 2002. Reverend the Hon. Fred Nile simply wants to ensure that the report of the Independent Pricing and Regulatory Tribunal does not come back to this Chamber and that nothing is able to be done about it until the Government is no longer accountable for the legislation.

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.36 p.m.]: The Opposition has amply demonstrated that it wants to continue using the WorkCover issue as a political football. In December there will be only a short period within which honourable members will be able to debate this issue. It is fair and

reasonable to expect the Independent Pricing and Regulatory Tribunal to report after the election and not during the election period in February through to April. This amendment reflects the intentions of the Opposition all along—that is, to try to use WorkCover, the injuries that people have suffered and related issues for its own political purposes. The amendment moved by Reverend the Hon. Fred Nile takes into account the election period and is sensible.

The Hon. Dr PETER WONG [11.37 p.m.]: I have no political interest in this issue.

[*Interruption*]

That is the truth. I do not care who wins in relation to this issue; I care only about taxpayers' money. If the WorkCover scheme is being managed properly by the Government, it no longer has to be accountable to the people. If the scheme is working, there is no reason why the Independent Pricing and Regulatory Tribunal should not report on the required date. As I said earlier, this scheme will not work. It is a sham and things will only get worse. That is the reason the Government is scared.

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

The Committee divided.

Ayes, 16

Dr Burgmann	Mr M. I. Jones	Mr Tingle
Ms Burnswoods	Mr R. S. L. Jones	Mr West
Mr Costa	Mr Macdonald	
Mr Della Bosca	Reverend Nile	*Tellers,*
Mr Dyer	Mr Oldfield	Ms Fazio
Mr Hatzistergos	Ms Saffin	Mr Primrose

Noes, 16

Mr Breen	Mr Harwin	Mrs Sham-Ho
Dr Chesterfield-Evans	Mr Lynn	Dr Wong
Mr Cohen	Mr Pearce	
Mrs Forsythe	Ms Rhiannon	*Tellers,*
Mr Gallacher	Mr Ryan	Mr Jobling
Mr Gay	Mr Samios	Mr Moppett

Pairs

Mr Egan	Mr Colless
Mr Obeid	Miss Gardiner
Ms Tebbutt	Dr Pezzutti

The CHAIRMAN: Order! The vote being equal, I give my casting vote with the ayes and declare the question to be resolved in the affirmative.

Amendment of amendment agreed to.

Amendment as amended agreed to.

Schedule 10 as amended agreed to.

Title agreed to.

Bill reported from Committee with amendments.

Adoption of Report

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.44 p.m.]: I move:

That the report be now adopted.

Amendment of the Hon. Ian Macdonald agreed to:

That the question be amended by omitting all words after "That" and inserting instead:

"this bill be now recommitted with a view to the further consideration of schedule 8."

Motion as amended agreed to.

In Committee (Recommittal)

Recommitted schedule 8

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.47 p.m.]: I move:

Page 50, schedule 8, line 17, as amended in Committee. Omit "or in respect of a liability of a self-insurer".

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.47 p.m.]: This matter was debated previously, voted on and an amendment was carried. At that time we went through the reasons for the amendment being passed, but I will recap them lest some members have forgotten. The essence of the matter is that if the Government wants to help WorkCover's finances by stopping commutations, it may do so through managerial matters. It should not interfere in the way self-insurers manage their money. If one says workers should not have the opportunity to commute their payments, surely that is a matter for them to decide. The Labor Council, which I believe speaks for the workers in this matter, has given its support to the earlier amendment to enable workers to receive commutations. So too has the Law Society. The people who represented the workers interests and those who represent the self-insurers are in favour of the earlier amendment. Therefore, I believe that amendment should remain and I ask that members vote against this amendment.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.50 p.m.]: The Committee should be aware of a number of important points before coming to a view on the amendment. First, the bill has provision to allow WorkCover to delegate its authority to allow commutations in circumstances other than provided for in the specified circumstances in which commutation will be allowed. The Hon. Dr Arthur Chesterfield-Evans was only half right in the submission that he put to the Committee that self-insurers manage commutations claims well. Indeed, some self-insurers manage them very well but some manage them very poorly—probably more poorly than is indicated by the worst of the problems of the general scheme.

It is important to consider that self-insurers are managing their own money, whereas the general scheme is managed from funds provided by premium payers. The amendment could lead to random discriminatory results on commutations as between one group of workers and another. I am prepared to accept this much of the argument put by the Hon. Dr Arthur Chesterfield-Evans: that some self-insurers will manage the interests of the workers and their own financial affairs better than can be done under the binding arrangements of the scheme put into place by this legislation.

The discretion given to the WorkCover General Manager to authorise self-insurers to use provisions other than those provided for in this set of provisions would allow management of the kind that the honourable member claims to be in place across the board with self-insurers, but which is in fact restricted to only some of the self-insurers. I urge the Committee to consider that the Government proposal allows proper discretion for WorkCover to delegate decisions to self-insurers. However, rather than allow a blanket discretion for self-insurers who do not manage their affairs well to act contrary to the interests of the workers in an industry and contrary to their own financial capacity, it is better to use the discretion in an orderly and delegated fashion.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 16

Dr Burgmann	Mr M. I. Jones	Mr Tsang
Ms Burnswoods	Mr Macdonald	Mr West
Mr Costa	Reverend Nile	
Mr Della Bosca	Mr Oldfield	*Tellers,*
Mr Dyer	Ms Saffin	Ms Fazio
Mr Hatzistergos	Mrs Sham-Ho	Mr Primrose

Noes, 16

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

Pairs

Mr Egan	Dr Pezzutti
Mr Obeid	Miss Gardiner
Ms Tebbutt	Mr Colless

The CHAIRMAN: Order! The vote being equal, I give my casting vote with the ayes and declare the question to be resolved in the affirmative.

Amendment agreed to.

Recommitted schedule 8 as amended agreed to.

Bill reported from Committee secundo with a further amendment and report adopted.

Third Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.59 p.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 27

Ms Burnswoods	Mr Hatzistergos	Ms Saffin
Mr Costa	Mr M. I. Jones	Mr Samios
Mr Della Bosca	Mr Kelly	Mrs Sham-Ho
Mr Dyer	Mr Lynn	Mr Tsang
Ms Fazio	Mr Macdonald	Mr West
Mrs Forsythe	Mr Moppett	
Mr Gallacher	Reverend Nile	
Miss Gardiner	Mr Oldfield	*Tellers,*
Mr Gay	Mr Pearce	Mr Jobling
Mr Harwin	Mr Ryan	Mr Primrose

Noes, 5

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

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

WORKERS COMPENSATION SELECT COMMITTEE

Reverend the Hon. FRED NILE [12.06 a.m.], by leave: I move:

That the resolution of the House of 28 June 2001 requiring General Purpose Standing Committee No. 1 to monitor and review the workers compensation scheme be amended by inserting, after "(No. 2)" in paragraph 1 (b), the words "and the Workers Compensation Legislation Further Amendment Bill 2001".

Paragraph 1 (b), as amended, will read:

(b) to monitor and review the implementation and operation of the Workers Compensation Legislation Amendment Bill (No. 2) and the Workers Compensation Legislation Further Amendment Bill 2001, as finally passed by the Parliament,

Motion agreed to.

WORKERS COMPENSATION LEGISLATION

Personal Explanation

Reverend the Hon. FRED NILE, by leave: I wish to make a personal explanation. I understand that the Secretary of the Labor Council, Mr John Robertson**,** reported to Labor Council executives and its meeting of affiliates today that he had been informed by a third person that the Hon. Ian Macdonald had said to me, "Labor Council amendments to WorkCover will bring down that bill." That is not correct. The Hon. Ian Macdonald did not convey any such sentiments to me about Labor Council amendments. I request the Secretary of the Labor Council, Mr Robertson, to withdraw his statements concerning the Hon. Ian Macdonald. I made my decisions on the WorkCover bill after broad consultation with many groups and individuals with a knowledge of WorkCover. I hope that that clarifies the situation for the Secretary of the New South Wales Labor Council.

TABLING OF PAPERS

The Hon. John Della Bosca tabled the following papers:

(1) Annual Report (Departments) Act 1985 — Reports for year ended 30 June 2001:

Environment Protection Authority
Judicial Commission of New South Wales
New South Wales Fire Brigades
New South Wales Rural Fire Service
State Emergency Service

(2) Annual Reports (Statutory Bodies) Act 1984 — Reports for year ended 30 June 2001:

Central Coast Waste Planning and Management Board
Environmental Trust
Inner Sydney Waste Board
Macarthur Waste Board
Northern Sydney Waste Planning and Management Board
Protective Commissioner
South East Waste Planning and Management Board
Sydney Catchment Authority
Western Sydney Waste Board

(3) Legal Profession Act 1987 — Report of Professional Standards Department of the Law Society of New South Wales for year ended 30 June 2001

Ordered to be printed.

SPECIAL ADJOURNMENT

Motion by the Hon. John Della Bosca agreed to:

That this House at its rising today do adjourn until Tuesday 4 December 2001 at 2.30 p.m.

ADJOURNMENT

The Hon. IAN MACDONALD (Parliamentary Secretary) [12.10 a.m.]: I move:

That this House do now adjourn.

ESTIA FOUNDATION OF AUSTRALIA

The Hon. JOHN HATZISTERGOS [12.10 a.m.]: On 16 September I represented the Premier at the Estia Foundation of Australia Millennium Dinner—its major fundraiser of the year. I take this opportunity to share with the House my admiration and support for this young yet impressive organisation. On 29 November 1994 His Eminence Archbishop Stylianos, Primate of the Greek Orthodox Church in Australia, announced the formation of the Estia Foundation. This organisation was established to be the church's first "estia" or "shelter" for children with special needs. Estia is a benevolent organisation aimed at enhancing community support services for people with disabilities and their families. As part of the archdiocese, the organisation enjoys the support of many churches and parishes throughout New South Wales which have assisted in the development of respite and recreation services for those with special needs. With co-operation and encouragement from governments and community groups, Estia is an important vehicle by which the archdiocese supports and cares for those members of our society who have special needs, whether of a physical or of an intellectual nature.

Even though Estia has a strong spiritual affiliation with the Greek Orthodox Church, it has a reputation in the community as a place where people with disabilities from all walks of life and all nationalities are welcomed and cared for. Within three years of its foundation, Estia's ideal of shelter was transformed into a practical reality. Today the Estia Foundation runs care units at St Andrews House in Gladesville and Elpida House in Roselands. The short history of Estia is replete with success, and its rapid progress has been an inspiration to behold. On 23 November 1996 at St Andrews Greek Orthodox Church in Gladesville the Estia Foundation was honoured by a visit from His All Holiness the Ecumenical Patriarch Bartholomeos I. Coinciding with the patriarch's visit, the Premier was present on this occasion to announce recurrent State Government funding for Estia to commence respite services for people with disabilities at St Andrew's House. St Andrew's was officially opened on 20 April 1997 and now offers weekend respite activity for 20 clients.

Estia's valuable and important work at St Andrew's was quickly recognised, and support was drummed up to expand Estia's services. At the foundation's annual dinner in 1999, in the presence of His Grace Bishop Seraphim, the Premier made a further announcement that future State Government funding would be made available for a second Estia respite house. Throughout 2001 Estia has been setting up its second care unit—Elpida House at Roselands—which will be fully staffed and operational in the new year. At Elpida House the families of people with an intellectual or physical disability will be offered a break from care for three to five days during the week. The Estia Foundation provides high-quality care and assistance, but much more than that: it places an emphasis on clients making a cultural and civic contribution to society. Estia has organised excursions, concerts, art exhibitions and other activities—all of which aim to furnish clients and their families with rich and enjoyable life experiences.

In October last year Estia was proud to accommodate athletes and trainers from the Greek Paralympic contingent at the 2000 Games. Estia clients and carers attended church and social functions to welcome the Greek contingent, and in turn attended some of the Paralympic events in Sydney. The past year has seen the full refurbishment of Elpida House in Roselands, as well as the praiseworthy consolidation of Estia's existing respite and day-care services. These achievements indicate strongly the dedication, professionalism and compassion of those who work for Estia. Indeed, the foundation provides a magnificent model for other non-government organisations involved in the care of our more needy fellow citizens. In August 2001, in the International Year of Volunteers, Estia director Basil Galanos was recognised for his work with a prime ministerial award for community service. Our State is indeed fortunate to be one of the most culturally, linguistically and religiously diverse in Australia. The archdiocese is an important participant in a multicultural New South Wales. In particular, the work of its Estia Foundation embodies the qualities of tolerance, compassion and community participation. I applaud the work of this splendid organisation and look forward to its future successes.

OPEN GOVERNMENT FORUM

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.15 a.m.]: I wish to address the need for open government. Democracy exists only when citizens have free access to information about the operations of their government. I believe that legislators in New South Wales can learn much from looking at the way that other jurisdictions allow free access to information. I hope that many of my colleagues will attend my Open Government Forum at Parliament House on 10 December. I inform the House of a few examples of open government from other jurisdictions, such as in Sweden. The following example illustrates how a political reporter in Sweden would typically get information from the Swedish equivalent of the New South Wales Premier's Office. I quote an extract from Johan Lidberg's *Freedom of Information as a journalistic tool - a comparative study between Western Australia and Sweden*, 2001 95 FoI Review 42-43. It states:

> In the premier's office the reporter would find two binders with the premier's incoming and outgoing mail. In the vicinity there is a photocopier for public use to copy relevant correspondence. There is also an index list of what had been archived in the last three weeks. Should the reporter want to delve further into the index a public computer is usually provided. The index covers all archived documents, including the ones that potentially are not public. The reporter may, for instance, decide to investigate how the premier uses the travel account. That archive index can be found in the economics department and among other things would contain summaries of travel destinations. After an hour of going through the different indexes the reporter might have a list of between 5 to 15 documents that he/she would like to have copies of. The next stop would then be the central archive where the reporter presents the list to a public servant who immediately locates the documents... No agencies have blanket exemptions from FOI.

I refer to open government in New Zealand. Section 5 of the New Zealand Official Information Act 1982 embodies an underlying principle of the availability of official information. The journal article states:

> The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is a good reason for withholding it.

I emphasise "unless there is a good reason for withholding it". In New Zealand Cabinet documents can be requested and are often released. Another example of open government is Wales. Minutes, agendas and papers of Welsh Cabinet meetings are regularly available on the Internet. The home page of the Welsh Cabinet states:

> The Cabinet's policy is to conduct its business as openly as possible. Accordingly, we publish the minutes, papers and agendas of its meetings unless there are overriding reasons not to. From this page, you can access minutes for all meetings from March 2000, and papers and agendas for all meetings from July 2001 …
>
> We withhold material from publication only where there is an overriding reason for doing this. So we do not include in the published versions of Cabinet papers or minutes anything which:
>
> - is commercially sensitive;
> - relates to the Assembly Budget or other budgetary or financial matters;
> - contains or alludes to information received in confidence from a third party; or
> - would otherwise cause substantial harm if disclosed.
>
> However, the documents which appear on this site are otherwise exactly the same as those considered by the Cabinet.

I have printed out and hold in my hand the minutes of the Welsh Cabinet dated 8 October 2001. I seek leave to table those minutes.

Leave granted.

Document tabled.

Another example is open government in South Australia. Contract disclosure policy adopted by the South Australian Government since 1 July 2001 is as follows:

> The South Australian Government is committed to openness and accountability and has adopted a contract disclosure policy which will apply to all contracts entered into from 1 July 2001.
>
> The policy will result in practices comparable to those in a number of overseas countries, including the United States of America and members of the European Union, where disclosure of government business information to the public is commonplace.
>
> In general terms the Government's policy means that summaries of all Government contracts for goods, services or works will be made publicly available through the Internet. Publication of all contractual documentation will also be required for some contracts.
>
> The policy applies to contracts with all 'public authorities' (as defined in the State Supply Act to 1985) and includes SA Water Corporation, TransAdelaide, SA TAB and SA Housing Trust.
>
> There are some exemptions from the policy based on the type and size of the contract. A summary of the application of the policy is below …
>
> - Genuinely confidential business information - where it can be clearly demonstrated that a party or other person would gain a commercial advantage or be disadvantaged by the disclosure of such information;
> - Trade secrets/intellectual property - where the release of such information would prejudice a party;
> - Defence and National Security information, matters affecting public safety or matters affecting security of government facilities;

- Public interest - where it can be demonstrated by the Government that a person or a group of persons could be seriously harmed either socially or economically from the release of such information;

- Legal risk - where disclosure would be contrary to the provisions of an Act, found an action for breach of confidence, be a breach of contract or be contrary to an order of a court.

Specific contract information supplied by a potential contractor seeking to enter into a contract with government may, in exceptional cases, be excluded from the policy principles of disclosure, however, a genuine and clear justification for the exclusion must be shown.

A number of jurisdictions have far more open government than has New South Wales, and they are the better for it. I can give more examples of that. Experts from around the world will be at my Open Government Forum on 10 December in the Parliament House Theatrette.

TERRORIST ATTACKS ON THE UNITED STATES OF AMERICA

The Hon. JOHN RYAN [12.20 a.m.]: In the 10 days before the House resumed on Tuesday of this week I made a private visit to the city of New York in the United States of America. While I was in that city I felt compelled to take notice of the aftermath of the terrorist attacks on the World Trade Center, which took place on 11 September. Like all of us, I had seen those events extensively covered in the media. However, nothing prepared me for the reality of facing the actual site, now known as Ground Zero. I did not make any special arrangements to visit the site; I just walked the streets around the site, as would any other member of the public. As the site has been gradually cleaned up it has become possible to view it from a fairly close distance, albeit behind a perimeter fence.

The site is so vast and so horrific that I am not ashamed to say that I found it very upsetting, to the point of tears. The site is large—about the size of a football field. The two towers that were destroyed were vastly taller than any building in the city of Sydney. It was tragic to see the photographs of missing loved ones, notes, children's drawings and floral tributes that have been left at various places around the edge of the site. I took the chance to visit and pay respects to fallen firefighters and police officers at a couple of memorials that have been set up outside fire stations and police stations by families, friends and the general public. They were equally distressing. The evidence of ordinary people's grief since 11 September is everywhere.

I had reason to travel from the city to the suburbs and I noticed that there was barely a home which was not prominently displaying the American flag. I noticed that the flag was displayed from almost every motor vehicle, every shop window and from billboards. Most people in the streets were wearing some representation of the flag on their clothing in the form of ribbons or badges. I read a poster that was in a shop window which featured the stars and stripes and contained a slogan beneath it which stated, "These colours don't run"; it expressed a sentiment which I found to be typical. Extensive security measures were in place around buildings such as theatres, hotels and tourist attractions. The measures included metal detectors, bag searches and other forms of security.

Thoughts arising from 11 September dominated messages expressed during last Thursday's traditional Thanksgiving celebration. The messages even featured in a wedding that I attended at the weekend. The events have been portrayed graphically in the annual Macy's Thanksgiving Day Parade, which I also attended and viewed from the street. A large contingent of New York police officers and firefighters carried two huge flags symbolising the two buildings that were destroyed. They were greeted enthusiastically by the massive crowds who turned out to witness the street parade. The officers also carried one particular flag which had been found and hoisted over the site on a crane. The tragedy of the attack on 11 September was great. Approximately 3,900 people lost their lives, but to date only about 400 bodies have been recovered from the site.

Recovery efforts continue, 24 hours a day, seven days a week. The fight-back of the citizens of New York has been equally impressive. New Yorkers have raised approximately $40 million and have distributed the first round of grants to victims and their families. Before I left the city last Friday I was sufficiently moved that I sent a fax to the Mayor of New York, Mr Rudolph Giuliani, complimenting him and his fellow citizens on the manner in which they had attempted to overcome the tragedy with great dignity and determination. I am sure that all honourable members would join with me in wishing the mayor and the people of New York well for the future and extending our thoughts and sympathy to the people of New York and of the United States of America as they cope with their grief, particularly during the holiday season when, no doubt, thoughts will extend to people who will not be present this year. I hope that the House would find my first-hand, although informal, account of my experiences in New York of some interest.

TRIBUTE TO MARY WHITEHOUSE, CBE

Reverend the Hon. FRED NILE [12.24 a.m.]: Tonight I pay tribute to a humble servant of God, Mary Whitehouse, CBE, 1910 to 2001, whom I regard as a modern Deborah. She went to her eternal reward with her Lord on Friday 23 November. For more than 30 years Mary Whitehouse was a household name that evoked enthusiastic support or prejudiced hostility. The cause she co-founded in the 1960s remains even more valid today than it was then. At a packed meeting in the Birmingham Town Hall on 5 May 1964 she said:

> If violence is shown as normal on the television screen, it will help to create a violent society.

The following day *The Times* reported on the meeting and said:

> Perhaps never in the history of the Birmingham Town Hall has such a successful meeting been sponsored by such a flimsy organisation.

The power of the mass media is now widely recognised. The truth of what Mary Whitehouse said in the 1960s has been borne out, as much of Western society, which has been saturated with violent entertainment, is now experiencing unprecedented levels of social and cruel violence. Mary Whitehouse was a teacher who specialised in art and taught at Wednesfield School, Wolverhampton. From 1960 until 1964 she held the post of senior mistress at Madeley School in Shropshire. It was during her time at Madeley that she became aware of the profound effect that television was having on the moral values of the girls in her care. Nurtured by the media, the 1960s were years of great political upheaval and social change.

Mary Whitehouse, who was always motivated by a profound Christian faith, believed that something should be done about the damaging influence of the media. Together with her husband and Reverend Basil and Mrs Nora Buckland, she launched the Clean-Up TV campaign in 1963 and organised a petition. Half a million signatures were presented to the governors of the BBC. Programs did not improve, so in 1965 she co-founded the National Viewers and Listeners Association as a response to the huge public support for the campaign.

In 1972 she launched a nationwide campaign petition for public decency, which attracted 1.5 million signatures, and a protracted campaign led to the enactment of the Indecent Displays Act in 1981. Mary Whitehouse was always supported by an active executive committee. She never feared controversy, and in 1981 she initiated a unique private prosecution against the play *Romans in Britain* on the issue of blasphemy.

Mary Whitehouse was widely respected for her courage, sincerity and transparent honesty, as well as for her ability to see the substance of issues clearly. She met regularly with politicians, various Secretaries of State and broadcasters in her efforts to secure good entertainment that would benefit society as a whole, rather than simply the narrow interests of program makers and film producers. In 1977 Lord Annan, speaking in a House of Lords debate on the future of broadcasting, paid this tribute:

> I have very considerable respect for Mrs Whitehouse. It is common, among both the intelligentsia and the broadcasters, to sneer at her. Let no-one forget that, on the evidence which our Committee received, she speaks for millions, and the force with which she speaks is matched by her personal modesty and absence of rancour. Our committee judged that she, and others of course, had made out a case which the broadcasters had not answered.

Over the years Mary Whitehouse made many campaign trips around the world to address meetings and conferences on the effect of the media on society and to advise on appropriate remedial action. As honourable members may remember, she came to Australia in 1973 to help launch the Australian Festival of Light. In 1979 she launched an Australia-wide campaign that led to laws prohibiting child pornography. In 1984 she launched a campaign that assisted in bringing in legislation to prohibit X-rated videos in Australia. Mary Whitehouse's most important legislative success was the enactment in 1978 in the United Kingdom of the Protection of Children Act, which made child pornography illegal. She worked hard to counter the immorality and exploitation of pornography and obscenity by consistently campaigning for effective amendments to the Obscene Publications Act.

On meeting her, many people were surprised to find that Mary Whitehouse was an entertaining companion with wide interests, including the arts and sport, especially tennis, snooker and football, and that she had a good sense of humour. Her passion was gardening, and she spent many hours, trowel in hand, planting flowers and shrubs, so there was always a rich and colourful outlook from her home. She wrote six books, including *Cleaning Up TV* in 1966. I believe that she was a great lady, a modern Deborah. It shows what one woman can do to mobilise a nation. I am pleased to offer this tribute to her memory.

FEDERAL CABINET

The Hon. IAN WEST [12.29 a.m.]: I note with interest the make-up of the Coalition's Federal Cabinet. At times one can get confused about people's roots, so it is refreshing to see that the Liberal Party and the National Party recruit their anointed ones from organisations, federations, institutes, associations, societies, chambers and other unions of people with like minds and objectives. The Coalition members champion "go it alone" individualism yet they appear to belong to their respective organisations and unions. According to the *Macquarie Dictionary*, "union" means "a number of people, societies, states, etc., associated for some common purpose".

I am heartened to see that the spawning grounds for the Coalition aspirants are, as always, embedded in collectivism and unionism. The Coalition parties have a long history of enjoyment of the benefits of collectivism and unionism. Organisations that have collective bargaining as their aim—such as Employers First, the Retail Traders Association, chambers of commerce, the Farmers Federation, the Master Builders Association, the Australian Hotels Association, bar associations, the Australian Medical Association and others—formerly hosted the talent of the Coalition. At the Federal level employers, farmers and lawyers all have a collective voice within the Coalition.

Of the 30 Coalition Ministers, 18 were practising lawyers or solicitors and members of their bar associations and appropriate State law societies. A further four were members of the Queensland Canegrowers Association, including a former full-time president. Three were chamber of commerce chairs, directors and advisers; one was president of a very militant union—the Australian Medical Association—and one came from an organisation which, I believe, comes closest to agrarian socialism in Australia, the Farmers Federation, which professes that public funding to anyone other than farmers represents creeping socialism. They do a very effective job for their respective organisations and constituencies.

John Howard was an executive member of the Liberal Party from 1963 and vice-president from 1972 right up until he became a member of Parliament in 1974—an active party operative. John Anderson was Chair of the Tambar Springs National Party from 1984 to 1989 and an active member of the Farmers Federation, but then somehow won preselection for the seat of Gwydir. Peter Costello was an industrial lawyer and, like the other lawyers—Coonan, Hill, Vaile, Alston, Ruddock, Ellison, Williams, Minchin, Abetz, Macdonald, Vanstone, McGauran and Andrews—enjoyed the support offered by their legal societies or associations. Mark Vaile was Chair of Wingham Chamber of Commerce—another hotbed of collectivism in the national interest. Larry Anthony was secretary of the National Party's Sydney branch and an adviser to the Sydney Chamber of Commerce.

The Institute of Public Affairs provided the Liberal Party with David Kemp in 1990. Brendan Nelson, originally from Tasmania, made the ultimate sacrifice when he left the Australian Medical Association to join the Howard Government in 1996. The Queensland Canegrowers Association lost two of its champions of public interest in Warren Truss and Ian MacFarlane, who both left in the 1990s to further their contributions to society through the Coalition. Indeed, they saw it as a privilege to serve. Of the 20 New South Wales State shadow Ministers, seven were practising lawyers, a further seven were members of the Farmers Federation and 10 were party operatives. There are some 61 peak employer bodies in New South Wales as opposed to 51 trade unions. Perhaps it is only the Australian labour movement that should not collectively bargain for improvements to their lot in life.

MOTOR ACCIDENTS SCHEME

The Hon. GREG PEARCE [12.33 a.m.]: In 1999 the Government introduced a system of whole-person impairment for motor accident claims, but set the level at 10 per cent. The New South Wales Bar Association has recently claimed that as at March 2001, in the Motor Accidents Scheme, no victim of a motor accident had received a medical assessment in excess of 17 per cent whole-person impairment. Research conducted by the Motor Accidents Scheme identifies only one single example of a motor accident victim likely to satisfy an assessment with 20 per cent whole-person impairment.

There are many who have misgivings about the Motor Accidents Scheme and that impairment level. Indeed, on 5 April the Labor Council of New South Wales hosted a forum in the Parliament which was addressed by its then secretary, the Hon. Michael Costa. Under his hand the Labor Council distributed a document which contained various comments on the reformed model of the Motor Accidents Scheme. The Labor Council stated in relation to the Motor Accidents Scheme:

- A draconian Scheme for victims and their families.
- Has not delivered $100 green slip reduction.
- Insurers continuing to make huge profits.
- Solicitors turning hundreds of victims away (no entitlement under new scheme).
- Victims with very serious injuries are not meeting the 10% threshold required … Example, a victim who was hospitalised for 17 days and medically retired by the employer, submitted a claim to the insurer and was advised that he didn't meet the 10% threshold. The victim must now go to the Medical Assessment Service (MAS) to determine that he is over the 10% threshold.

The victim did not get over that and had to go to the Claims Assessment Service. The Labor Council thought that he might miss out. The Minister for Police might be able to tell us what happened to that victim. The Labor Council also noted that the AMA was extremely critical of the scheme and its harshness in relation to medical assessments that are based on American guidelines. The new Medical Assessment Tribunal, which was established in October 1999 had, according to the Labor Council and the Bar Association, only assessed one matter on 12 March 2001. The Minister should consider a number of questions in relation to the operation of the Motor Accidents Scheme in the past two years.

In evidence to the Standing Committee on Law and Justice on 11 December 2000 Mr David Bowen, General Manager of the Motor Accidents Authority [MAA], stated that the 10 per cent whole person impairment threshold was predicted to permit about 10 per cent of claimants access to non-economic loss compensation. Has that been borne out? If so, does that demonstrate that the threshold may be too high for members of the community to realistically expect proper compensation for pain and suffering and loss of enjoyment of life? Further, in giving his answer, Mr Bowen acknowledged that guidelines that give such an outcome are a matter of policy response, not a manipulation of guidelines by the MAA. Has the Minister requested any work or policy advice of the MAA in the past two years to assess the impact of the 10 per cent threshold? Has any officer of the MAA done any policy work or advice in this area at all in the past two years? I hope that the Minister will tell us when that was done and what was the outcome.

At the same hearing on 11 December 2000, Mr Bowen said that claiming rates under the new scheme as opposed to the former scheme could be properly assessed by the MAA in perhaps another full year. That full year has almost expired and I want to know what information can now be given in relation to the operation of the scheme. Further, according to a statement made by the General Manager of the MAA to the Law Society, benefit payments made under the MAA scheme in the first year were $37 million, whereas the projections made by the MAA in August 1999 for the first year were $49 million. That is an error of approximately 25 per cent or $12 million. I want to know why that error was made. Finally, the scheme is unfair and operates in a way that is inequitable and harsh for many claimants. I am reluctant to see the expansion of that type of approach to injured persons.

CARTER HOLT HARVEY CARDBOARD FACTORY WORKERS

Ms LEE RHIANNON [12.37 a.m.]: On behalf of the Greens I congratulate workers at a corrugated cardboard factory owned by Carter Holt Harvey. Eighty-three factory floor workers, members of the Australian Manufacturing Workers Union [AMWU] printing division, went on strike and refused to accept a wage rise for themselves until office staff were given improved conditions. After four days on strike and on the picket line the office workers are now eligible to take days off for overtime worked. They will receive a uniform allowance and their wages will be reviewed, in consultation with the AMWU. The factory floor workers won a 14 per cent increase over three years and improved redundancy conditions.

I joined the picket line for a short time, which gave me the opportunity to hear about the workers' campaign at first hand and to meet Gordon Stanton, AMWU State organiser, who helped the workers to achieve their great win. The Greens congratulate all the workers, Gordon Stanton and AMWU Printing Secretary, Amanda Perkins, on this win. The male factory workers staged a fantastic campaign, standing by the women office workers so that they could all share in the fruits of victory. The Greens also congratulate Ms Amanda Perkins on her re-election to the position of secretary. Workers in New South Wales in printing and associated industries are well served by her work in that role.

Motion agreed to.

House adjourned at 12.39 a.m. Friday until
Tuesday 4 December 2001 at 2.30 p.m.