LEGISLATIVE COUNCIL

Tuesday 11 December 2001

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The Chairman of Committees (The Hon. Tony Kelly) took the chair as Acting-President at 11.00 a.m.

The Acting-President offered the Prayers.

PARLIAMENTARY ETHICS ADVISER

Annual Report

The Acting-President tabled, in accordance with the terms of the agreement made with the Clerk of the Parliaments and the Clerk of the Legislative Assembly, the annual report of the Parliamentary Ethics Adviser for the year ended 30 November 2001.

Report authorised to be published.

PETITIONS

Morisset Policing

Petition praying that a permanent police presence be returned to Morisset, received from **the Hon. Michael Gallacher**.

Gay and Lesbian Mardi Gras

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

BUSINESS OF THE HOUSE

Postponement of Business

Notice of Motion No. 1 postponed on motion by the Hon. John Jobling.

EVIDENCE LEGISLATION AMENDMENT BILL

Second Reading

The Hon. JOHN HATZISTERGOS, on behalf of the Hon. Michael Egan [11.12 a.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This Bill provides for amendments to be made to the Evidence Act 1995 and the Evidence (Children) Act 1997 to:

- Allow an interpreter who assists in a number of proceedings heard in the same court on the same day to take a single oath or make a single affirmation;
- Remove the need for a court to explain to witnesses and interpreters the choice between an oath and an affirmation if it is satisfied that the choice has already been explained;
- Make it clear that people who are religious or who hold spiritual beliefs can take an oath whether or not their beliefs include a belief in the existence of a god;

- Prevent a judge from warning or suggesting to a jury that children are an unreliable class of witnesses;
- Set out the circumstances in which a judge can warn a jury about the reliability of a particular child's evidence;
- Make it clear that a person appointed as an intermediary for the purpose of asking questions of a child witness is not appointed for the purpose of giving legal or other advice to an unrepresented accused person or defendant; and
- Make other consequential amendments.

Section 22 (1) of the Evidence Act requires an interpreter to take an oath or affirmation before acting as an interpreter in "a proceeding." "A proceeding" is not defined in the Act, however, it is understood that it is the practice of some judges to swear in the interpreter for each specific case for which they perform that role, even in circumstances where the same interpreter may be providing interpreting services in more than one case before the court on a given day.

This process is inefficient, time consuming and adds to the cost of justice.

The amendments will enable an interpreter to be sworn for the purpose of acting in the capacity of that court's interpreter for the day.

Section 23 of the Act obliges the Court to explain to a person who is to be a witness or act as an interpreter that they have a choice of taking an oath or making an affirmation.

This can be time-consuming for the Court, especially where the witness is sufficiently stressed by the experience of being in court that they are unable to comprehend advice about the difference between an oath and an affirmation.

Also, in circumstances where the witness is from a non-English speaking background, the mere process of going through the explanation in open court may have the unintended consequence of undermining the credibility of that witness.

In order to streamline the process of ensuring that a witness understands that they have a choice between an affirmation or oath, the amendments provide that the Court need only ask the witness whether the choices with respect to oaths or affirmations have been explained to them by an officer of the Court. In the event that the witness indicates that the choice has been explained to them, the administration of the oath or affirmation may proceed. In the event that the witness indicates that the choice has not been explained, or that they do not understand the choice, then the present obligation on the Court to inform the witness of the choice should be maintained.

It is envisaged that the amendment will mean that where parties are represented, counsel who is to call the witness will, in the course of preparing the witness to give evidence, explain the choice.

I now turn to the amendments in respect of the taking of oaths by persons who hold religious beliefs but do not believe in a god or supreme being.

As a general comment, issues concerning the form or content of an oath taken by a particular witness are now largely academic, in light of section 24 (2) of the Act, which provides:

(2) An oath is effective for the purposes of this Division even if the person who took it:

a) did not have a religious belief or did not have a religious belief of a particular kind; or

b) did not understand the nature and consequences of the oath.

This provision means that any defect in the taking of an oath by a witness cannot be relied upon to challenge the competence of a witness, or to render the witness's evidence unreliable or inadmissible.

Also, I make mention of the English Court of Appeal case, *Peter Kemble*, reported in the Criminal Appeal Reports of 1990, Volume 90, at page 178, in which the Court held in a joint judgment, that the question of whether the administration of an oath to a witness is lawful does not depend upon the considerable intricacies of a particular religion adhered to by the witness, but rather concerns two matters only: first, whether it was an oath which appeared to the court to be binding on the witness's conscience; and second, if so, whether it was an oath which the witness himself or herself considered to be binding on his or her conscience.

Notwithstanding these general observations, I believe it is important to accommodate the wishes of those who want to take an oath but do not adhere to a religion that requires belief in a god. An example of such a group of people are Buddhists who, incidentally, represent the fastest growing religion in Australia.

The Act does not currently contemplate the taking of an oath by a person of the Buddhist faith, or indeed, any person who, whilst holding religious beliefs, does not believe in a god or supreme being. While the ability to make an affirmation or declaration will satisfy people who do not hold any religious belief, it may not satisfy this group of people.

Further to this point, the Australian Government Solicitor has advised that while it may be possible under the New South Wales Act in its present form for a person who does not believe in a deity to take an oath, there would be some doubt about the validity of such an oath. The New South Wales Crown Solicitor is less optimistic and takes the view that a person who does not believe in a deity cannot take an oath under the Act in its present form.

The proposed amendments will clarify this situation, so that those people who hold religious beliefs but do not believe in a god may take an oath.

The object of amending the provisions in the Act relating to oaths is to ensure that the law is, and is seen to be, accessible to and inclusive of all people who live in New South Wales, irrespective of their religious beliefs.

In respect of those amendments relating to children's evidence, the Wood Royal Commission into the New South Wales Police Service made a recommendation relating to the Evidence Act 1995. Recommendation 90 states that consideration be given to an amendment to the Evidence Act consistent with draft recommendation 5.8 of the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission relating to the warnings to be given by judges in jury trials involving the evidence of child witnesses.

The Australian Law Reform Commission's draft recommendation 5.8 included:

- Judges should be prohibited from warning or suggesting to the jury that child witnesses are an unreliable class of witness;

- A warning about the reliability of a particular child witness should only be given at the request of a party and relate only to the status of the evidence itself rather than to general assumptions about the abilities of children; and

- The onus should be on the party requesting the warning to show there are exceptional circumstances warranting it.

Subsequently, the Commission published its final Report "Seen and heard: priority for children in the legal process" which, at Recommendation 100, makes a substantially similar recommendation.

Following the enactment of the Evidence Act in New South Wales, the New South Wales Evidence Act Monitoring Committee was established for the purpose of considering the need for legislative reform of the Act as required. The Committee has recommended the implementation of Recommendation 90 with certain qualifications that are reflected in the Bill.

Finally, in respect of the Evidence (Children) Act 1997, section 28 of the Act allows the court to appoint a person to conduct an examination, cross-examination or re-examination of a child witness, instead of the examination being conducted by an unrepresented accused. Such a person appointed by the court is to ask the child any questions that the accused requests the person to put to the child.

The intention of the amendment is to make it clear that the person appointed is not to provide legal representation to the accused or to exercise any influence with respect to the examination in chief, cross-examination or re-examination, but merely to act as a neutral intermediary for the purposes of asking questions of a child witness.

The amendments proposed are essential to assist New South Wales courts to provide more efficient and accessible justice for all members of the community.

I commend the Bill to the House.

The Hon. GREG PEARCE [11.12 a.m.]: The Opposition does not oppose this bill. There has been consultation with a number of parties who are interested in the operation of the courts. The intention of the bill is to update the Evidence Act and the Evidence (Children) Act to include a number of amendments that effectively improve court procedures and recognise a number of issues that arose from Law Reform Commission reports and opinions of the Crown Solicitor on the current operation of the Evidence Act. The Chief Justice, the Bar Association, the Law Society and the Legal Aid Commission have all been consulted. The bill updates the Evidence (Children) Act by implementing an Australian Law Reform Commission recommendation regarding cross-examination and the possible practice of judges prohibiting, warning or suggesting to a jury that a child witness may be an unreliable class of witness.

In addition, the bill includes a number of other provisions designed to improve court procedures. In particular, it allows an interpreter who is assisting in a number of proceedings in the same court on the same day to take a single oath or make a single affirmation. The bill also inserts new section 24A in response to the New South Wales Crown Solicitor's view that persons who do not believe in a deity cannot take an oath under the Act in its present form. The amendment is intended to clarify that situation for those who hold religious beliefs but who do not believe in a god and may therefore have a problem taking an oath. Accordingly, the Opposition commends the bill to the House.

Ms LEE RHIANNON [11.14 a.m.]: The Greens generally support this bill, which makes various changes to laws relating to evidence. We are particularly pleased to see that the improvements to the oaths procedure take proper account of the nature of our diverse society and the range of beliefs held by its people. It is important that our legal systems and institutions understand and respect the different beliefs in our society. We therefore welcome this change. Many people hold spiritual beliefs that exclude the existence of God. Whilst I do not fit into that category, that view ought to be acknowledged and respected. This legislation will update the different communities within our present society.

The reforms to evidence procedures for children also seem sensible. Considering that these reforms result from a recommendation of the Wood royal commission, it is clear that they carry weight. Whilst children's evidence can at times be less reliable than that of adults, that is not necessarily the case. We believe it is a worthwhile move to consolidate the way children give evidence and to ensure that it is fully appraised within the court system. We are pleased to support this legislation. I hope Reverend the Hon. Fred Nile will

contribute to this debate because I am interested to hear his comments about oaths. The thrust of this legislation reflects the fact that we are not a Christian society; we are a multicultural society of many beliefs.

Reverend the Hon. FRED NILE [11.17 a.m.]: The Christian Democratic Party supports the bill and understands its provisions in relation to oaths. The bill will make it clear that people who are religious or who hold spiritual beliefs can take an oath whether or not their beliefs include a belief in the existence of a god. The bill makes it clear also that when a person takes an oath or makes an affirmation the judge must be clear that the person understands that he or she is agreeing to tell the truth. The form or content of an oath taken by a particular witness is now largely academic in light of section 24 (2), which provides,

> An oath is effective for the purpose of this Division even if the person who took it:
>
> (a) did not have a religious belief or did not have a religious belief of any particular kind, or
>
> (b) did not understand the nature and consequences of the oath.

Under that provision any defect in the taking of an oath by a witness cannot be relied upon to challenge the competence of a witness or to render the witness' evidence unreliable or inadmissible. This has no effect at all on the historical fact that Australia is a Christian nation. This bill provides basically for the way our society operates. The taking of an oath or the making of an affirmation is not a religious test. When witnesses state that they will take an oath they are not asked whether they believe in God. That question has never been asked. As chairman of a number of parliamentary inquiries I simply ask witnesses to take an oath or make an affirmation. Sometimes witnesses who are practising Christians will make an affirmation because, for some reason, they do not believe a Christian should take an oath.

A person who chooses to take an affirmation is not necessarily an atheist. In other words, taking an oath or affirmation is not a religious test, nor should it be. People take the oath to the best of their ability, their knowledge of God. Their understanding of a supreme being is in their own minds. It is not for a court to ask them to explain their concept of God. I see no radical change in the legislation. It recognises the way the court has been operating. The Christian Democratic Party supports the bill.

The Hon. JOHN HATZISTERGOS [11.20 a.m.], in reply: I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

COURTS LEGISLATION FURTHER AMENDMENT BILL

Second Reading

The Hon. JOHN HATZISTERGOS, on behalf of the Hon. Michael Egan [11.22 a.m.]: I move:

> That this bill be now read a second time.

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

Leave granted.

> The Government seeks to amend certain Acts relating to the courts and court procedures. These amendments are necessary to improve the operation of the courts of New South Wales.
>
> Schedule 1 amends the *District Court Act 1973* to remove the restriction on referring "long and complex" matters to arbitration in the District Court.
>
> Removal of this blanket prohibition is designed to prevent lawyers from engaging in fruitless argument about the length and complexity of their cases and to focus discussion on the substantive aspects of the case which may or may not make it suitable for arbitration.
>
> Schedule 1 also amends the *District Court Act 1973* to permit matters to be referred to mediation or neutral evaluation without the consent of the parties. The amendment was requested by the Chief Judge.
>
> This power was granted to the Supreme Court by the *Supreme Court Amendment (Referral of Proceedings) Act 2000.* Members will recall that the Supreme Court amendment was supported by all members who spoke in the Parliament. It was an important initiative in encouraging the mediation and settlement of disputes, reducing court delays and minimising legal costs.
>
> It is anticipated that the amendment allowing the District Court to decide which matters would benefit from mediation and neutral evaluation, will provide similar benefits for litigants.

Schedule 2 amends the *Evidence on Commission Act 1995* to allow the District Court to take evidence on commission outside the State for the purpose of proceedings within the State, and to take evidence within the State for the purpose of proceedings outside the State.

At present, the courts covered by the *Evidence on Commission Act 1995* are the Supreme Court, the Industrial Relations Commission, the Compensation Court and the Dust Diseases Tribunal.

As the jurisdiction of the District Court has increased, they are receiving more requests for evidence to be taken on commission. The amendment will allow the District Court to take evidence on commission interstate and overseas, saving expense and inconvenience for parties who may otherwise have to travel vast distances to court to give their evidence.

Schedule 3 amends the *Judicial Officers Act 1986* to provide for Magistrates to have the same compulsory retirement age as other New South Wales judicial officers. Currently Magistrates are required to retire at 65 but Acting Magistrates can continue until the age of 70. This amendment means all judicial officers must retire at the same age.

Schedule 4 amends the *Local Courts (Civil Claims) Act 1970* to remove the restriction on Local Courts sending "long and complex" cases to arbitration. This is consistent with the amendments made to the *District Court Act 1973* in Schedule 1 to encourage early settlement of disputes.

Schedule 5 amends the *Supreme Court Act 1970* to clarify the qualifications for appointment to judicial office. The amendment will ensure that a person who is a serving judge is eligible for appointment as a judge of the Supreme Court, and that a serving judge of another court of equivalent status is eligible for appointment as Chief Justice of the Supreme Court.

The Chief Justice was concerned that the current provisions preclude the appointment of someone who is presently a judicial officer in another court. Similarly, the current qualifications for the position of Chief Justice appear to preclude the appointment of a judge from another court (e.g. the Federal Court) as Chief Justice. The amendment clarifies the situation.

All the amendments contained in the Bill improve the operation of the courts of New South Wales. The amendments enhance efficiency, promote uniformity between jurisdictions, and encourage greater use of alternate dispute resolution to reduce court delays and minimise costs.

I commend the Bill to the House.

The Hon. JAMES SAMIOS [11.22 a.m.]: I lead on behalf of the Coalition on this matter. The objects of the bill are:

(a) to amend the District Court Act 1973:

  (i) to permit the District Court to refer proceedings to mediation or neutral evaluation without the consent of the parties, and

  (ii) to remove provisions in that Act that prevent the District Court referring complex and lengthy court actions to arbitration,

(b) to amend the Evidence on Commission Act 1995 to allow the District Court to take evidence on commission outside New South Wales (whether interstate or overseas),

(c) to amend the Judicial Officers Act 1986 to provide that a Magistrate is to retire on reaching the age of 72 years (rather than 65 years),

(d) to amend the Local Courts (Civil Claims) Act 1970 to remove provisions in that Act that prevent a Local Court from referring complex and lengthy court actions to arbitration,

(e) to amend the Supreme Court Act 1970:

  (i) to allow a person who is or has been a Judge of the High Court or Federal Court of Australia or of the Supreme Court of another State or Territory to be appointed as the Chief Justice or a Judge of the Supreme Court, and

  (ii) to clarify that a person is qualified to be appointed as Chief Justice of the Supreme Court if the person has been a Judge of the Supreme Court or a judicial member of the Industrial Relations Commission, and as Judge of that Court if the person has been a judicial member of the Industrial Relations Commission.

The Opposition does not oppose these amendments, which are important because they add to the efficiency of and uniformity between jurisdictions as stated by the Attorney and they encourage greater use of alternative dispute resolution to reduce court delays and minimise costs. In essence, they seek to amend procedures relating to courts and to provide courts with a more efficient set of provisions to reduce lengthy delays and provide for better housekeeping. Accordingly, the Opposition does not oppose the legislation and welcomes the amendments.

The Hon. IAN COHEN [11.25 a.m.]: On behalf of the Greens I support the Courts Legislation Further Amendment Bill. The bill makes minor amendments to a variety of courts legislation in New South Wales. One good example from the Greens perspective is that it allows a serving judge from another State or court to be

eligible for appointment to the Supreme Court. It also allows Local Court magistrates to retire at 72, which is the retirement age for judges in other courts. That seems quite reasonable. The bill will allow the District Court greater control and discretion over matters that it believes should be sent to arbitration. The Greens fully support alternative methods of dispute resolution without going through the more traditional court process. This is a cost-saving and appropriate user-friendly direction for courts to take. The bill will increase efficiency in the court system and help reduce the logjam that so often clogs up courts and creates major difficulties both for officers of the court and the public. The Greens support the bill.

Reverend the Hon. FRED NILE [11.27 a.m.]: The Christian Democratic Party supports the Courts Legislation Further Amendment Bill. We note the provision in the bill that magistrates will be able to retire at the age of 72 years instead of 65 years. We would suggest that the Chief Magistrate could consider extending the retirement age if a magistrate remains capable of acting effectively. Many people are mentally and physically alert at the age of 72 years, and the provision seems to be discriminatory.

The bill will amend the Supreme Court Act to provide that a judicial member of the Industrial Relations Commission may be appointed as Chief Justice. The Supreme Court deals with all types of cases, whereas the Industrial Relations Commission is very specialised. It remains to be seen whether a judge of the Industrial Relations Commission would be qualified, either legally or through experience, to be promoted to the position of Chief Justice. I do not mean to criticise judicial members of the Industrial Relations Commission, but I believe that the position of Chief Justice should be filled by a judge of the Supreme Court.

The appointment of that person could bring into question the operation of the Supreme Court and other judges. If someone from the Industrial Relations Commission, without perhaps the necessary experience, is appointed to the position of Chief Justice, when other experienced judges could fill the position, that would seem to be sowing the seeds of division or introducing a sense of competition. We note that, and perhaps there is a simple explanation for it.

The Hon. RICHARD JONES [11.30 a.m.]: I support the Courts Legislation Further Amendment Bill. I have consulted the Law Society and the Bar Association, and they are quite happy with this bill. No doubt the Government also consulted the Law Society and the Bar Association. I have one question about raising from 65 to 72 the age at which magistrates must retire. Why was 72 decided on? Is it an arbitrary figure? In a sense, it is an acknowledgement that people are more active now than they were some years ago, and that they are still perfectly able to continue working until the age of 72, rather than 65. I suspect that some years ago people were less able at 65 than they are today. Why did the Government decide on 72? Why not 75 or even 80? It is still discrimination, after all.

Reverend the Hon. Fred Nile: As long as they can do the job.

The Hon. RICHARD JONES: Yes, I think they should be able to do the job until they choose to retire. Perhaps there should be a panel to decide whether people are competent to do the job, rather than making them retire at the arbitrary age of 72. I still think it is discriminatory.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.31 a.m.]: In general principle the Australian Democrats support the bill. The point made by the Hon. Richard Jones is valid. The Parliament needs to grapple with the fitness of judicial officers when they reach a certain age—indeed, their fitness at any age. The problem is that some very fit officers may be compelled to retire at 72, whilst others may be unfit to continue working beyond 65. Age-based retirement works on the assumption that all people become unfit to continue working at exactly the same age.

This is even a problem for labourers. The Anti-Discrimination Act came in when I was working at the Water Board and we had to establish a system of physically assessing people to see whether they were fit to continue working. That was somewhat problematic, but at least it had the effect of making people much more conscious of their fitness: the younger people who were letting their bodies go raised their game considerably. Presumably that means that in a few years more and more people will be fit at an older age. Basically, we need a non age based system of assessing people's fitness to do their job. Often, people who have not looked after themselves and who have less money saved need to work for longer because they have spend it on gambling, drinking or smoking. So age-based retirement needs to be addressed. Raising the age from 65 to 72 is simply putting off the day that the Parliament should address age-based retirement.

The Hon. JOHN HATZISTERGOS [11.32 a.m.], in reply: I thank honourable members for their contributions. I shall deal briefly with some of the matters raised. First, it is important to recognise that this bill

raises the retirement age for magistrates from 65 to 72. To the extent that honourable members have argued that there is some discrimination, the discrimination exists at present in the sense that magistrates, who must now retire at 65. are treated differently to other judicial officers, who can retire at 72. The Government sees this change as a progressive move that will make the retirement age of magistrate's the same as that for other judicial officers, which is consistent.

Honourable members raised legitimate concerns about people's productivity after they turn 72, and about 72 being an arbitrary age. We must draw the line somewhere. Some 25 years ago Australians voted in a referendum for a retirement age of 70 for Federal judges, and that is now the norm that applies to the retirement age of Federal judges. For example, there should be a turnover of judges, particularly as they deal with issues that require a reflection of contemporary values. In other words, judges should not be appointed for life, as used to be the case, but there should be a turnover of judge from time to time.

The Government is of the view that this amendment provides a balance. It allows us to draw on the experience of judicial officers until a specific age and at the same time it allows the opportunity for new officers to be appointed from time to time and to make a contribution to judicial administration, as exists for all appointments. So arbitrariness is, and always will be, involved. The alternative is to have judges appointed for life. That was the subject of some criticism that, as I said, resulted in a referendum that made 70 the retirement age for Federal judges. Again, some would regard that as an arbitrary age; nevertheless that decision was taken by the people. Essentially, this proposal will reduce discrimination, not increase it. Reverend the Hon. Fred Nile questioned the ability of judges of the Industrial Relations Commission to take on the judicial office of Supreme Court judge generally and to be appointed as Chief Justice in particular.

Reverend the Hon. Fred Nile: The judicial members.

The Hon. JOHN HATZISTERGOS: That is correct. First, judicial members must be qualified to be appointed as judges in the Industrial Relations Commission. People who are not qualified to be judges cannot be appointed as judicial members. When people are appointed as judicial members of the Industrial Relations Commission, the Industrial Relations Act gives them status equivalent to that of a Supreme Court judge in terms of salary and other benefits. This is in line with other courts that may not be part of the Supreme Court but are at the same level, such as the Land and Environment Court, which is also a specialised court. Judges of the Land and Environment Court have status equivalent to that of a Supreme Court judge.

This bill not only recognises that status, it goes one step further and provides that they are eligible to be in the pool to be appointed to the position of Chief Justice if that is an appropriate selection to be made. It does not necessarily mean that they will be appointed to the position of Chief Justice; it simply facilitates that appointment if it is appropriate, as is currently provided for in other courts. Most people who are appointed to the Industrial Relations Commission as judicial members have practised at the bar or worked in a legal practice where they have experience in a wide number of fields.

Reverend the Hon. Fred Nile: Can they be a union official?

The Hon. JOHN HATZISTERGOS: Non legally-qualified union officials can be appointed as a deputy-president, but a judicial member must be qualified to be a judge. We are talking only about judicial members; we are not talking about deputy-presidents, who, as I say, may not be legally qualified. Judicial members will be eligible to be in the pool to be appointed to the position of Chief Justice if they are the most appropriate person for that position. I see nothing wrong with that, particularly if they have sufficient qualifications and experience prior to going to the bench.

Honourable members should not forget that the Chief Justice and, indeed, judges of the Court of Appeal can from time to time deal with matters involving the industrial relations jurisdiction. So to the extent that industrial relations issues might come before the court—and they do from time to time—judicial members will have the benefit of experience in that previous jurisdiction.

This is a facilitating amendment that simply allows greater flexibility of appointment. It does not necessarily mean that the next Chief Justice will come from the Industrial Relations Commission. It simply provides that if a person appointed to the Industrial Relations Commission as a judicial member is the most appropriate person to be appointed to the position of Chief Justice when a vacancy arises, bearing in mind the field has been broadened to include judges from other States, from the Federal Court and from the High Court, so be it. The best person should be appointed to the position of Chief Justice, irrespective of their immediate past judicial experience. For those reasons, I commend the bill to the House, and I thank honourable members for their contributions.

Motion agreed to.

Bill read a second time and passed through remaining stages.

INDUSTRIAL RELATIONS AMENDMENT (PUBLIC VEHICLES AND CARRIERS) BILL

Second Reading

Debate resumed from 5 December.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.40 a.m.]: I lead for the Coalition. I noted the comments by the Minister during his second reading speech on 5 December. The Coalition does not oppose the bill. Since 1979 New South Wales industrial laws have included special provisions in the form of a modified industrial relations system for drivers engaged in contracts that are not contracts of employment. This is presently covered by chapter 6 of the Industrial Relations Act 1996. These arrangements cover a diverse range of occupations in the transport sector. Owner-drivers of motorcycles, vans and bicycles who perform courier-related work are one such occupation. Taxi drivers are another, as are owner-drivers of trucks.

The New South Wales Industrial Relations Commission has the power to make contract determinations and contract agreements that govern the payment of these workers and the way in which they operate. The operation of special provisions for these drivers has been in place for more than 20 years. However, a situation has now arisen that necessitates the passage of this legislation and it is to that aspect that I now turn. The Commonwealth Trade Practices Act 1974 prohibits certain restrictive trade practices and anticompetitive conduct. The New South Wales Government has indicated that it has received legal advice that chapter 6 of the Industrial Relations Act 1996 would contravene the Federal Act. Section 51 (1) (b) of the Federal Trade Practices Act specifies that its prohibitions do not affect anything done in a State if it is specified in and authorised by a State Act of Parliament or regulations made under such an Act.

This type of protection for chapter 6 of the Industrial Relations Act 1996 is currently provided by the Competition Policy Reform (New South Wales) Regulation 2001, made under the Competition Policy Reform (New South Wales) Act 1995. The authorisation thus conferred will, however, lapse on 13 January 2002. The provisions in the Federal Trade Practices Act prevents this protection from being further extended by way of regulation, as has been done previously. In order to rectify the situation, this bill inserts into the Industrial Relations Act a new section 310A. Subsections (1) and (2) of proposed section 310A affect the provisions of chapter 6 of the Industrial Relations Act by authorising them for, and protecting them from, the Trade Practices Act and the Competition Code of New South Wales.

Proposed section 310A (3) applies the section to any contract determination or agreement made prior to the commencement of this legislation. This will ensure that determinations and agreements that are currently in place will not lose their validity under the provisions of the Trade Practices Act. Proposed Section 310A (4) provides a sunset clause for the authorisation conferred by this legislation: two years from date of commencement. This will allow for further review of how well these new arrangements are working after a period of operation. I must say that the Coalition—unlike the Government, which continues to fail to do so—has consulted with stakeholders about this legislation. In his speech, the Minister made not one reference to any industry group that he consulted with, if he consulted with any.

Whilst this bill makes amendments to effectively retain the validity of existing arrangements, the Government has an obligation to consult with interested stakeholders but, yet again, shows no evidence of having done so. The Coalition has, in the limited time available to it, due to the haste with which this legislation was introduced, consulted with the New South Wales Road Transport Association and the New South Wales Taxi Council. As it turns out, neither organisation has any objection to the legislation, but both organisations advised my office that they had not heard of it until contacted by my office!

Just as we have seen the Government fail to consult on large-scale legislation, such as that dealing with workers compensation, we now see the same thing at the other end of the scale. Unfortunately, this is another practical instance of a Government that is arrogant and out of touch. I thank the New South Wales Road Transport Association and the New South Wales Taxi Council for their promptness in providing my office with advice on this bill, despite the unavoidably short notice.

When we are talking about independent contractors and the whole question of contractors in New South Wales it is important to place on record that many of them are small business people. The parents of some of the children from St Michael's School at Blacktown who are in the gallery are undoubtedly small business people who work under contractual agreements. The legislation we are debating today goes to the question of the future of independent working arrangements in this State.

Although the Government is quick to try to push through this legislation—legislation that we agree needs to be put in place by next January—it is interesting to note that the Industrial Relations Amendment (Independent Contractors) Bill continues to languish as item No. 29 on the business paper. When the New South Wales Parliament is prorogued some time between now and next February, that bill will simply disappear into the ether. That is because the Government is in a considerable quandary about how to deal with that bill. I remind the Minister for Industrial Relations that the bill to which I have just referred was introduced before he was appointed to that portfolio. If honourable members cast their minds way back, they will recall that we once had a Minister in this Chamber named Jeff Shaw and that it was he who introduced that legislation into this House in June 2000.

The Hon. John Della Bosca: That is a long time ago.

The Hon. MICHAEL GALLACHER: Yes, but may I remind the Minister that last Saturday was not a long time ago. On Saturday the people of Tamworth voted, and the results will carry a message that will certainly not be lost on the Opposition, as it will not be lost on the Labor Party. Let me assure honourable members opposite that it will not be very long before the people of New South Wales go to the polls, and independent contracting and the right of individuals to choose the method by which they operate in this State will be an important and determining factor in that election. The aim of the Minister and the Government is to ensure that independent contractors become a thing of the past.. The Government is committed to tying contractors down in such a way that they are obliged to become more involved with the union movement than has ever previously been the case.

The Coalition, on the other hand, is committed to protecting the rights of independent contractors and to ensuring that they have the necessary framework by which they can operate independently in New South Wales. It is important to once again place on the record that it was only a few days after the legislation to which I earlier referred was introduced in June 2000 that Jeff Shaw had to fall on his sword when the inadequacy of his presentation and the implications of the legislation became apparent to members of the Government. I remind Government members and members of the crossbench that when that sneaky trick was tried, it was one part of a package of industrial reforms in New South Wales. One need only go back to the caucus briefing paper to note the absence of any mention of independent contractors.

Honourable members opposite were in a complete panic once it was exposed as nothing more than a payback to left-wing unions in New South Wales. As I noted earlier, it was the catalyst for Jeff Shaw eventually having to pull the pin on the legislation. The Minister continues to mumble incoherently, as he normally does in this Chamber. He has had carriage of the legislation since June 2000, and we are virtually on the eve of 2002. The Minister has no idea how to address the issue and keep his union mates on side. He looks forward to the proroguing of Parliament so that he can step off the twig—like the Government's political chances in 2003.

Ms LEE RHIANNON [11.50 a.m.]: The Greens support the bill, but the hot news is that the Coalition does also. I am left wondering what the Minister for Employment and Workplace Relations in the big place in Canberra would think if he knew that the Liberals in New South Wales had given up an opportunity to fight for individual contracts.

The Hon. John Della Bosca: Mike has become a small "l" Liberal.

Ms LEE RHIANNON: Are they the wets? I am never quite sure what is wet and dry with them. What would Mr Abbott think about the approach of the Liberals in this place?

The Hon. John Della Bosca: He would be shocked.

Ms LEE RHIANNON: Yes, and distressed that the Liberals are giving up the fight on a heartland issue for them. What has happened to market forces here? Have the Liberals turned over a new leaf? Are they into regulating the market?

The Hon. John Della Bosca: They want to win, Lee.

Ms LEE RHIANNON: They know how to get onto a winner. It is curious. Mr Gallacher's speech did not enlighten us any more on the new thinking, if it is new thinking. Maybe it is muddled thinking, as that word was used earlier. The bill preserves the provisions of chapter 6 of the Industrial Relations Act for taxi drivers, van drivers, motorcycle and bicycle couriers and truck drivers. Chapter 6 protects the industrial rights of these

transport workers by allowing the Industrial Relations Commission to make contract determinations, like awards, and to approve or reject contract agreements, like enterprise agreements. The bill is necessary to stop sections 45 and 45A of the Federal Trade Practices Act 1976, which prohibit anti-competitive behaviour, from destroying chapter 6 of the New South Wales Industrial Relations Act.

The Greens support this outcome because it is necessary to protect a group of workers who would otherwise be massively exploited. The Greens often speak about the possibility of having unanimity on important issues for the people of New South Wales. The Coalition, some of the minor parties and the Government are coming together to provide this protection. We need this type of protection because workers are unable to collectively bargain owing to the nature of their industry. Without the amendment these workers would be at the mercy of an unregulated marketplace which has a history of low incomes, poor maintenance and safety, and exploitation.

This perhaps is something of the world that the current Federal Minister for Employment and Workplace Relations, Mr Tony Abbott, would like to inflict on all Australians. But because of the break in ranks from the Coalition today he cannot push it is far as he would like in New South Wales. So maybe we are getting closer to that popular front that the Special Minister of State periodically talks about.

The Greens are happy to support the bill as it shows the sensible way in which regulatory intervention in the marketplace can and does produce fair and reasonable outcomes for workers. However, when I was reading the explanatory notes of the bill it took a while to understand what the bill was actually about. The Government might consider using more plain English in legislation and explanatory notes. With that observation, the Greens are very pleased to support the bill.

Reverend the Hon. FRED NILE [11.55 a.m.]: The Christian Democratic Party supports the Industrial Relations Amendment (Public Vehicles and Carriers) Bill. There has always been confusion over the role of drivers of public vehicles and carriers of goods who are engaged under contracts that are not contracts of employment. In the period leading up to the Federal election many courier drivers expressed concern about how they were being affected by Federal tax changes. The bill will clarify their role and, hopefully, give them some protection. The bill will protect chapter 6 of the Industrial Relations Act 1996 from the operation of part IV of the Federal Trade Practices Act, and place that protection on permanent footing by amending the Industrial Relations Act 1996 so that it specifically authorises things done under chapter 6 for the purposes of the Trade Practices Act and its corollary in New South Wales, the Competition Code of New South Wales.

The bill also make it clear that the authorisation extends to things done by the Contract of Carriage Tribunal under chapter 6, namely, the payment of compensation for the unfair termination of head contracts of carriage. Over the years the Christian Democratic Party has been involved with some of the controversies involving drivers carrying eggs for the Egg Board and drivers of cement trucks—whether they were to continue operating under contracts or become employees of the cement companies. Constant supervision is necessary in this area to protect the rights of workers.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.57 a.m.]: The Australian Democrats support the bill, which will enable owner-drivers in the transport industry such as couriers and truck drivers to have reasonable bargaining power in seeking to achieve better working conditions. Under the bill the Industrial Relations Commission can make contract determinations, and unfair and anti-competitive practices will be prohibited with reference to the Trade Practices Act. Otherwise, in my understanding, the Trade Practices Act would supersede these provisions that allow negotiations.

This section of the transport industry is fragmented. In economic terms there is a perfect competitive market, with a small number of employer groups. The inequality of bargaining power has great ramifications. In many industries where unions are strong, the inequality of bargaining power is overcome by the tradition of unionism. In this industry, because of historical factors, the unions have not been able to be as strong as they are in other industries.

The situation is writ large in dairy farming, where there is a perfect market dealing with the concentration of power. Of course, that reduces prices to rock bottom. I am pleased that the Opposition supports the bill. In a relatively perfect market there are no unions to bargain collectively on behalf of labour, so the groups that are small and powerful always win. This simply has to be recognised. If we are not to have unions we need some other way of keeping equality in our society. The bill addresses that issue. Its economic and symbolic value needs to be recognised in this situation. Simply leaving it to the market will not solve the problem. It would be remiss of me not to point this out because it has ramifications for the way that a large amount of industry is regulated—not only for wages but for dairy farmers and the prices of goods.

Taxi truck operators are in an interesting situation because they are able to bargain but retain non-employee conditions regarding taxation. The Federal Democrats worked with the Courier and Taxi Truck Association on another matter regarding the Commonwealth's personal tax measures. The Australian Democrats had regard to their interests as individual contractors, and in this legislation they are effectively getting some collective bargaining power regarding working conditions and pay. People need collective bargaining power to get a fair go, but the fact that they are individual contractors as far as taxation is concerned will become increasingly important in the future and it needs to be addressed. The ramifications of this bill will be interesting in relation to that aspect.

The Courier and Taxi Truck Association have approached my office about how unfairly contractors and employees are treated in the absence of equitable taxation. I also flag that occupational health and safety issues concerning the transport industry still need to be resolved. I note that the Quinlan report was tabled last week. I hope that the health of contractors will be protected as a result of the report. The recommendations of the report ought to be implemented to address the occupational health and safety aspects of truck driving.

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) [12.01 p.m.], in reply: I thank all honourable members for their sensible contributions to the debate and for their support of the bill. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

RESIDENTIAL TENANCIES AMENDMENT BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [12.02 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The object of this bill is to amend the Residential Tenancies Act 1987 to provide that the New South Wales Land and Housing Corporation is not required to give notice under section 45 (1) of the Act to tenants who receive a rebate of rent—that is, those who do not pay market rent—and to provide that any rent increase made before 1 January 1999 in respect of property leased by the New South Wales Land and Housing Corporation is not invalid merely because notice was not given in accordance with section 45 (1) of the Act in relation to the increase.

The need to retrospectively validate past notices of rent increases issued by the Department of Housing prior to 1 January 1999, has arisen from a decision of the Supreme Court. In the Stannard case, it was held that the rent card system used by the Department of Housing until 31 March 1994, did not satisfy the requirements of section 45(1) of the Residential Tenancies Act 1987. Section 45 (1) of the Residential Tenancies Act states:

> **Increase of rent**
>
> 45. (1) The rent payable by a tenant under a residential tenancy agreement shall not be increased except by notice in writing given to the tenant specifying the amount of the increased rent and the day from which the increased rent is payable.

When a valid notice of increase in rent is served a tenant is bound to pay the increased rent unless a tenant chooses to challenge it under section 46 of the Residential Tenancies Act. It is important to note that the tenant in the Stannard case was paying a rebated rent, not market rent. Over a lengthy period of time, the rebated rent increased to such an extent that it became greater than the rent stated on the original tenancy agreement. They were advised in February 1991 that their market rent was $170 a week, but they continued to pay a rebated rent. The market rent of $170 a week even appeared on the tenant’s rent card.

However, both the Residential Tribunal and Supreme Court have found that the Department of Housing failed to comply with section 45 (1) of the Residential Tenancies Act, in that it failed to properly notify the tenant of market rent increases. As a result of that decision, the Department had to pay the tenant almost $5,000; that is, the difference between the original market rent of $77 a week, as stated on her tenancy agreement, and the rebated rent she had been paying. The Stannard decision is manifestly unfair to any social housing landlord. In his judgement, Justice Davies said:

> The end result of this case does not accord with my innate feeling of justice. It would seem that the tenant has been aware, since February 1991, that her rent was $170.00 less the rebate and has remained in possession and paid rent on that basis during the ensuing years. It seems unfair to the landlord that, when in 1999 it sought to recover arrears going back to December 1998, it should be met by defence that a Notice of Increase was not given in accordance with Section 45 of the Residential Tenancies Act. However, I have dealt with the issues in the case and am of the view that, as a matter of law, the landlord's appeal must be dismissed.

The proposed amendment means that this loophole will be closed. It means that tenants paying a rebated rent will not be able to profit and take advantage of a legal technicality. It means that the Department of Housing's limited resources can be applied to providing assistance to those in need. It is necessary to validate all notices of rent increase issued by the Department of Housing prior to 1 January 1999 as the Department's practices for notifying market rent increases have varied over the last 10 years.

On 25 July 1994, the Department of Housing issued notices of market rent increases only to tenants paying market rent. Tenants on a rebated rent received no notice at all. The letters issued to those on market rent were generated by computer and no electronic copies were kept. This amendment to the Act means that the notices of market rent increases issued by the Department of Housing on 25 July 1994, will not be deemed invalid. On 21 May 1998, the Department of Housing again issued notices of market rent increases. Unlike the notices issued in 1994, these notices were issued to all tenants and electronic copies are available. However, like the notices issued in July 1994, the 1998 notices did not stipulate the amount of the rent increase, only the total rent payable after the increase. In other words, the notice may have indicated that the rent payable was $180 a week, rather than stating that the rent had increased by $10 a week from $170 to $180 a week.

Some members of the Residential Tribunal have indicated that the notices sent out in 1994 and 1998 may not comply with section 45 (1) of the Residential Tenancies Act because they do not stipulate the amount of the rent increase. The proposed amendment to the Act will ensure that any potential defects in the 1994 and 1998 notices, will not result in another case similar to Stannard. Historically the Department of Housing, for logistical reasons, did not notify tenants on a rebated rent of increases in market rent. By amending s132 of the Residential Tenancies Act, the Department of Housing will no longer be required to notify tenants who pay a rebated rent, of market rent increases. Currently less than 10 per cent of the department's 130,000 tenants pay market rent. Section 45 (1) however, requires the department to issue all tenants with notifications of market rent increases. In other words, the Department is mailing out to its tenants every year more than 110,000 letters that are not relevant.

This is an unnecessary imposition on the Department of Housing and I would prefer to have that money and effort directed at providing assistance to our tenants. Every time the department issues notifications of market rent increases, it causes confusion amongst many of our tenants on a rebate. Even though the market rent on their home might have increased, the amount of rent they pay does not change. To help overcome this confusion, the department sets up a rent assistance hotline and takes calls from thousands of tenants. By exempting the Department of Housing from notifying tenants on a rebated rent of market rent increases, this unnecessary confusion will be avoided and department's resources can be put to better use. The Department of Housing tenants paying market rent will not be affected by this amendment. They will continue to receive notifications of market rent increases by the Department of Housing and have full recourse to the Residential Tribunal to appeal any increase they believe to be excessive.

In the course of consulting with tenant representatives about the proposed amendments, it has been argued that some tenants coming off a rebated rent will be unfairly disadvantaged. Tenant representatives have argued that tenants coming off a rebated rent and on to a market rent will have no knowledge of an increase in their market rent and therefore no ability to appeal that increase. Rather than unnecessarily delaying the proposed amendments, I foreshadow a future amendment to section 46 of the Residential Tenancies Act to ensure that tenants in this situation are not disadvantaged. The Department of Housing will continue to consult with tenant groups to finalise the precise details of the amendment to ensure that no tenant is disadvantaged by these amendments. I will bring that amendment back to the House once it is finalised. I commend the bill to the House.

The Hon. DON HARWIN [12.03 p.m.]: The Residential Tenancies Amendment Bill closes a loophole in the administration of the Residential Tenancies Act which was exposed in the Stannard case in the New South Wales Supreme Court. Prior to the Stannard case, the Department of Housing did not notify public housing tenants who were paying rebated rent of increases to the market rent on their properties. That is, if a tenant was paying a subsidised rent the Department of Housing would absorb any market rent increase and the tenant's subsidised rent would remain the same. Approximately 90 per cent of public housing tenants pay rebated rents. It could be argued very strongly that the only rental increases of interest to those tenants are increases in their rebated rents.

In the Stannard case a long-term public housing tenant's rebated rent gradually increased over the years. It was properly notified by the department but it increased until it was greater than the original market rent. The tenant brought an action in the Residential Tribunal, and a subsequent Supreme Court decision affirmed the tribunal's findings that the Department of Housing had failed to notify the tenants properly of market rent increases. The tenant was awarded the difference between her rental payments and the original market rent from the time the rebated rent exceeded the original market rent, some $5,000. This happened in spite of the fact that the actual market rent appeared on the tenant's rent card. That a public housing tenant should have profited from a relatively minor legislative anomaly in this way is quite absurd.

In order to comply with the Stannard decision, the Department of Housing currently sends notification of market rent increases to all tenants—over 130,000—not just the approximately 10 per cent who pay market rents. The amendments proposed in this bill will reduce the unnecessary administrative burden and cost of posting such a large number of notices, thereby allowing departmental funds to be better spent on public

housing. The only concern I have regarding the bill is the possible disadvantage that may be faced by tenants who are coming off a rebated rent onto full market rates. I understand that the Minister has foreshadowed future amendments in this regard. The Opposition does not oppose the bill.

Reverend the Hon. FRED NILE [12.07 p.m.]: The Christian Democratic Party supports this amendment to the Residential Tenancies Act 1987. As indicated by the Hon. Don Harwin, these amendments have become necessary because of the decision of the Supreme Court in the *New South Wales Land and Housing Corporation v Stannard and Another*. The court held that the Department of Housing did not comply with section 45 of the Residential Tenancies Act. This legislation is important in avoiding any uncertainty and any possible windfall gains to some tenants. The bill will validate all notices of market rent increases that were issued by the Department of Housing prior to 1 January 1999. It also provides for an exemption for the Department of Housing from providing notices of market rent changes to tenants on a rebated scheme. This is a sensible bill. The Christian Democratic Party supports the bill.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [12.08 p.m.]: I am pleased to support the comments that were made by my colleague the Hon. Don Harwin a short time ago in relation to amendments to the Residential Tenancies Act. I congratulate the Hon. Don Harwin on his ongoing interest in this legislation, especially his interest in those who are part of the public housing market in New South Wales. He continues to do an excellent job representing the Coalition, together with the shadow Minister, as they travel throughout New South Wales.

The Hon. John Della Bosca: Is he retiring or something?

The Hon. MICHAEL GALLACHER: No, he is most certainly not retiring. In 2003 the Hon. Don Harwin will assume a position in a new Coalition government. The Coalition continues to work with the people of New South Wales. The Hon. Don Harwin has carried out his responsibilities within the Coalition in a manner that is typical of the way in which the Coalition works with respective legislative stakeholders. His leading for the Coalition in this debate on very important legislative reforms recognises his contribution to the Coalition's consultative approach. This bill amends the Residential Tenancies Act to provide that any notice of market rent increases that was made before 1 January 1999 is valid notwithstanding any technical invalidity. The bill also provides that the Department of Housing will not be required to give notice of market rent changes, which is currently required under section 45 of the Act, to Department of Housing tenants who are entitled to rebated rent and who therefore do not pay the normal market rent rate.

This legislation is considered necessary by the Government—in particular the Minister for Housing—following a determination by the Supreme Court in the case of the *New South Wales Land and Housing Corporation v Stannard and Another* in which it was held that the rent card system that was used by the Department of Housing until 31 March 1994 did not satisfy the requirements of section 45 (1) of the Residential Tenancies Act 1987. In that case the tenant was paying a rebated rent, not market rent. Over time the rebated rent increased to such an extent that it became greater than the rent stated on the original tenancy agreement. In February 1991 the tenant was advised that the market rent for her property was $170 a week, but the tenant continued to pay a rebated rent. The market rent of $170 a week even appeared on the tenant's rent card. However, both the Residential Tribunal and the Supreme Court found that the Department of Housing failed to comply with section 45 (1) of the Residential Tenancies Act because it failed to properly notify the tenant of the market rent increases.

As a result of the decision the department had to pay the tenant almost $5,000, which was the difference between the original market rent of $77 a week, as stated on her tenancy agreement, and the rebated rent that she had been paying. The proposed amendment will close that loophole and tenants paying rebated rent will not be able to take advantage of a legal technicality to make a claim for the payment of money that they have not paid in the first instance. Under current legislation the rent payable by a tenant cannot be increased except by giving notice in writing to the tenant specifying the amount of increased rent and the day from which the increased rate is payable. When a valid notice of increase in rent is served on tenants they are bound to pay the increased rent unless they choose to challenge it under section 46 of the Residential Tenancies Act.

This bill will amend section 132 of the Act to provide that the Department of Housing will no longer be required to notify tenants who pay a rebated rent of market rent increases. The Special Minister of State is encouraging me to put more on the record—I would be happy to detail my years of living in public housing in Mount Druitt, in Western Sydney. To assist the House in processing the large body of legislation presently before it, I will contain myself. I know that the Minister is looking forward to hearing about my experiences in

that regard. I will give more detail at a future date. Currently the department is mailing out more than 110,000 letters to its tenants every year, although those letters are relevant to only 10 per cent of the 130,000 tenants who pay market rent.

Clearly, every time notices are sent out they cause confusion to the many elderly and disadvantaged Department of Housing clients, because even though the market rent on their homes may have changed they still pay the same rent. The department has established a hotline to take calls from the thousands of tenants who may be confused. Tenants paying market rent will not be affected by the amendment and will continue to receive notifications of market rent increases by the Department of Housing and have full recourse to the Residential Tribunal to appeal any increase that they believe to be excessive. However, it is important to note that tenants will not receive regular notice of the increase in the market rent rate. Therefore, when they come off rebated rent they will be faced with a rent increase that they would not have been aware of. Therefore, they will not have had an opportunity to appeal any or all of those increases over that period.

The Coalition will not oppose the legislation put forward by the Minister for Housing, the Hon. Andrew Refshauge. He has given an undertaking to make further amendments to section 46 of the Residential Tenancies Act to ensure that tenants in that situation are not disadvantaged and that the Department of Housing will continue to consult with tenant groups to finalise the precise details of the amendments to ensure that no tenant is disadvantaged by the amendments.

The Hon. IAN COHEN [12.14 p.m.]: The Greens oppose the Residential Tenancies Amendment Bill. We are concerned that it seeks to reduce notification requirements to public housing tenants regarding increases in rent. Section 45 (1) of the Residential Tenancies Act currently specifies that rent paid by a tenant under a residential tenancy agreement cannot be increased except by notice in writing to the tenant specifying the amount of the rental increase and the day from which the increased rent is payable. The Department of Housing has had various policies with regard to notifying public housing tenants about rent increases over the past decade. In 1994 a distinction was made by the department between those paying market rent and those on rebated rent. Only tenants paying market rent received that notice. In 1998 the department changed policy and decided to issue all tenants with notices. However, the notices did not specify the amount of the rental increase, only the total amount payable.

In Stannard's case the Supreme Court held that the notices did not comply with section 45 (1). Since that case the department has been forced to pay back to that tenant a substantial sum of money. The amending bill specifies that the department, known formerly as the New South Wales Land and Housing Corporation, is not required to give notice under section 45 (1) to tenants who pay a rebated rent. The bill operates retrospectively. The Greens do not support this and are of the view that all tenants, regardless of whether they are paying market rent or are entitled to rebated rent, should be entitled to be notified of any rental increases and the exact amount. On a practical level the bill will have a negative impact on tenants who are intending to pay market rent. They may be about to get a job or they may anticipate that their financial circumstances will change in the future. They have no way of knowing how much their rent will be if they intend to pay market rent. The Government has foreshadowed that it will move an amendment to deal with that situation. The Greens look forward to discussing that amendment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.16 p.m.]: The Australian Democrats support the bill. It is a reasonable attempt to stop windfall gains for people who have not been properly notified, according to the decision in Stannard's case. However, it is a poor show when Parliament has to pass legislation because a department is not capable of notifying people of a rent increase. It is like using a sledgehammer to crack a walnut. A department ought to be able to successfully notify people of the rent that they have to pay. Surely that is not a difficult procedure. Every private landlord manages to do that quite successfully, after negotiations with the tenant. I was surprised that the department does not notify tenants on rebated rent of the market rent for their property. I recognise that that saves the department sending out 110,000 notices each year and, as such, it is a cost saving—a saving that could result in an increased provision of housing.

On the other hand, as pointed out by the Greens, it is important for people to have a knowledge of market rent. A tenant on rebated rent tends not to know the market rent. If a tenant has to come off rebated rent after, say, 20 years, he would find that the rent has increased enormously. It is good policy to inform people of the market rent of their property so that they have some concept of the rental market. The Government is trying to optimise the use of its limited housing stock. Presumably tenants whose circumstances have changed will be told that they are no longer entitled to rebated rent, because people with greater need are on the public housing waiting list. I concede that there will be some savings, but I am not sure that this policy is an ideal solution.

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) [12.18 p.m.], in reply: I thank honourable members for their general support for the bill. In response to concerns expressed by the Hon. Ian Cohen, the Government observes that market rent appears on all rent accounts that are sent out to tenants four times a year. The department notifies all tenants of rental increases. I can show the Hon. Ian Cohen a tenant account that states that information. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

DISTINGUISHED VISITORS

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): I draw the attention of members to the presence in the President's Gallery of a delegation from the People's Republic of China, the Tangshan Municipal People's Government, led by the Vice-Mayor, Zhu Yunlin. I welcome them to the Chamber.

LANDCOM CORPORATION BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [12.20 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This Bill establishes Landcom as a statutory State-owned corporation within the context of the State Owned Corporations Act 1989 (NSW).

Landcom is currently a division of the Department of Urban Affairs and Planning and along with the Department of Housing carries out functions through the statutory entity of the NSW Land and Housing Corporation.

In accordance with the functions of the NSW Land and Housing Corporation set out in the Housing Act and often in joint venture arrangements with the private sector, Landcom acquires, develops and sells residential land and otherwise carries out urban development.

Landcom staff also act on behalf of the Ministerial Development Corporation under the Growth Centres (Development Corporations) Act developing commercial and industrial property under the trading name of "Business Land Group".

It is self evident that the complexity of these various arrangements creates some difficulties and Landcom's corporatisation will result in welcome change.

Corporatisation allows for a number of outcomes.

Firstly, it maintains Landcom in Government ownership recognising the role that Landcom may play in strategic metropolitan policy, particularly in strategic and/or complex projects.

Secondly, it rationalises and clarifies the complex framework under which Landcom operates at present.

Thirdly, it allows for clear commercial objectives and fourthly it creates appropriate managerial autonomy with an independent Board, which it is intended, will blend industry and management expertise.

The structure as a statutory State Owned Corporation is the most appropriate for Landcom and is in keeping with Government's approach to such enterprises—that is maintaining public ownership and control while allowing for an appropriate commercial focus on operations.

Common to all statutory State Owned Corporations, the Treasurer and the Special Minister of State will be the voting shareholders of the new corporation.

The Minister for Planning will be the Portfolio Minister.

Clause 6 of the Bill restates the four principal objectives of statutory State Owned Corporations included in the State Owned Corporations Act.

It also provides that Landcom will have the following additional principal objectives:

Firstly, to undertake, or assist the Government in undertaking strategic or complex urban development projects.

Secondly, to assist the Government to achieve urban management objectives.

Thirdly, to be a responsible developer of residential, commercial and industrial land.

The first objective relates to Landcom's role in massive urban renewal projects such as Green Square and the redevelopment of Prince Henry Hospital.

The second objective is to assist the Government to achieve urban management objectives. Such a role will see Landcom carrying out, or supporting, demonstration projects or studies that will serve as examples for the private sector and local government.

The third of the additional principal objectives, to be a responsible developer of residential, commercial and industrial land, is a broad statement of the basic role that Landcom currently plays and will continue to play in the future.

Under Clause 7 of the Bill, Landcom has the following principal functions: to undertake and participate in residential, commercial, industrial and mixed development projects; and to provide advice and services related to urban development, on a commercial basis, to Government agencies and others.

Under Clause 8 of the Bill, the Corporation will have a Board comprising 3 to 7 members.

These members will be appointed by the Shareholder Ministers in consultation with the Portfolio Minister. The Chief Executive Officer will also be a Director.

The employment arrangements for the Chief Executive Officer, set out in Clause 9, are consistent with other statutory State Owned Corporations established in recent years, including Waste Recycling and Processing Corporation established on 1 September 2001.

The provisions set out in Schedule 2 to the Bill for transferring staff from the Department of Urban Affairs and Planning to the new statutory State-owned Corporation will be consistent with those for establishing other such corporations.

The Corporatisation of Landcom will see the organisation take a leadership role in implementing the Government's urban policy objectives, which includes the creation of sustainable urban communities.

Landcom will also make greater use of joint venture arrangements in urban development and urban renewal projects.

In other projects Landcom will take on the role of masterplanner and masterdeveloper.

These changes will mean less emphasis on greenfields development in the future, which can be appropriately undertaken by the private sector.

Landcom needs to have the flexibility to operate successfully in a commercial environment as well as being fully accountable to Government and the community in the delivery of urban management objectives.

To this end, Clause 11 of the Bill provides for the Portfolio Minister to provide to the Board from time to time a written statement of priorities for the Corporation, setting out urban management priorities, projects to be undertaken or outcomes to be achieved.

Landcom is to have regard to any such statement in preparing its statement of corporate intent.

If it is decided that any of the priorities, projects, activities or outcomes, specified by the Portfolio Minister will not be implemented, the Shareholder Ministers must inform the Portfolio Minister of this decision and the reasons for it.

Landcom is to report to the Portfolio Minister, within six months after the end of each financial year on the extent to which the priorities, projects, activities or outcomes set out in the statement of priorities have been undertaken or achieved by the Corporation in the financial year.

When Landcom carries out these projects on behalf of Government the new State-owned Corporation will need to have regard to the Government’s relevant urban management objectives as well as addressing commercial objectives.

The new Landcom will provide leadership in quality urban design and it will continue to make to make a difference in our urban environment.

I commend the Bill to the House.

The Hon. DON HARWIN [12.21 p.m.]: The Landcom Corporation Bill in its current form seeks to fulfil two objectives: one relates to the business structure of Landcom, and the other relates to its functions and activities. The Opposition will not oppose the changes relating to business structure but will move amendments in Committee to the parts of the bill that seek to change the nature of Landcom's business activities. The corporatisation of Landcom is a natural progression for a body that currently exists as a substructure of the now renamed Planning New South Wales, with all the complex bureaucratic arrangements that that entails. As my

colleague the honourable member for Pittwater, the shadow Minister for Planning in the other place, has said, most honourable members believe that Landcom is already a corporate entity. The transformation of Landcom into a State-owned statutory corporation under the State Owned Corporations Act will increase the efficiency and accountability of Landcom and streamline the legislative framework within which the organisation operates.

The merits of the other function of the bill—namely, a change in Landcom's core business functions—are far less clear, and, indeed, pose some considerable risk to the taxpayers of New South Wales. When Landcom was originally established under the Land Commission Act in 1976 its primary role was to acquire, and subsequently release and market, low-priced land. The result of this activity was to moderate the inflation of land prices, to achieve more equitable and efficient development of urban land in New South Wales, and to co-ordinate development throughout the State more uniformly. To some extent these initial aims have been supplanted by Landcom's new enabling legislation, the Housing Act 2001, which this House recently debated and passed, but the underlying theme is similar. That Act provides as one of its aims the promotion of orderly and economic urban development and the adequate supply of affordable and suitably located land for housing at the minimum practical cost to consumers.

Among the principal objectives nominated for the new Landcom Corporation in this bill are the maximisation of the net worth of the State's investment in it; the undertaking of strategic or complex urban development projects; and the responsible development of residential, commercial and industrial land. These objectives are a long way from Landcom's original function as a land acquisition and release agency. Recent history demonstrates that Landcom has not even been fulfilling that role adequately. During the 6½ years that the Government has been in office, average land prices in Sydney have risen from $84,000 to $179,000 per lot—hardly a good example of moderated inflation. Landcom is currently providing only a fraction of total demand for vacant lots in New South Wales, and land prices are skyrocketing. In the past year, land prices in the Blue Mountains have increased by 134 per cent, Hawkesbury land prices have increased by 101 per cent and Penrith land prices have increased by nearly 63 per cent.

It is a government's traditional role to engage in enterprises that are not sufficiently lucrative for the private sector to take up. Bulk acquisition and long-term release of vacant land is such an enterprise, and it cannot be left alone to the private sector. While the Government could very well make significant financial gains by becoming a speculative developer of property and competing against large, well-established private companies in this field, it also exposes itself to very significant risk. This bill requires the newly formed Landcom Corporation to operate at least as efficiently as any comparable businesses. But how can we be confident that this efficiency will not lead to bungles such as recently evidenced in Landcom's Victoria Park development at Zetland, the master plan for which violated height limits stipulated by the Federal Airports Corporation?

New South Wales, and Sydney in particular, currently enjoys a very bullish property market. There is undoubtedly money to be made in property development, but we cannot be certain how long these market conditions will prevail. What happens when, inevitably, the market takes a downward turn and New South Wales taxpayers face massive exposures to financial losses in real estate? I cannot help but think that this bill is another move that will expose New South Wales residents to risk from the business activities of the government sector that perhaps does not have the skill to adequately operate within that sector. The potential exposure of taxpayers to massive financial loss under the provisions of this bill is too great a risk to take, and Opposition amendments will reflect these concerns. We would like to see Landcom return to its core business—namely, releasing affordable parcels of land to people wishing to build homes in New South Wales. The Federal Government has come to the party with its first home owners grant, and it is appropriate that the New South Wales Government plays its part as well.

Ms LEE RHIANNON [12.26 p.m.]: The Greens are in general opposed to the corporatisation of public assets that deliver public services and benefit. The business model may be suitable for the management of public assets, and the corporate world is an effective model for delivering profits and growth, but they are not the functions of public authorities. Public authorities exist to deliver public benefit, and that must be measured in a variety of ways. The adoption of a business model of organisational structure, which is the essence of corporatisation, can, in fact, be counterproductive to the delivery of public benefit. Landcom is engaged in an important and fundamentally public activity: urban development. Some urban development is terrible, and some is terrific. The quality of our urban development is one of the biggest issues in New South Wales at the present time. With the next State election on the horizon, it is generating many column inches in our daily newspapers and it is a matter on which the Premier of this State periodically gives dissertations.

The Greens frequently oppose Landcom's activities, such as the current controversial redevelopment of the Prince Henry Hospital site, in the heart of the Premier's electorate. We have a clear vision for urban development that is environmentally sound and community-based—a vision that obviously works for the majority of people and the environment. There is no inherent reason why Landcom could not work in a way that is consistent with this outlook. The key point is that control over urban development must be kept in public hands—that is, with the Government. While government control over urban development may not be not be perfect, as we have seen from time to time, the Greens argue that it ensures that the development is subject to public scrutiny and that it is out of the hands of the developers, those who seek to distort public policy for their own financial gain. If urban development is not subject to public scrutiny, it is much more difficult to haul it in and to ensure that development works effectively for all communities across the State.

The Greens are deeply concerned about the legislation because it puts that control in jeopardy. At present Landcom is effectively part of the Department of Urban Affairs and Planning and is controlled by the officers of that department and ultimately by the Minister. It is well known that the Greens regularly disagree with the department and the Minister. Experience has shown that generally the department is wrong, but at least everything is brought into the public arena, and I am sure the Special Minister of State agrees that is important. The Minister and the Government are responsible ultimately to the electorate and become particularly conscientious when an election is looming. Checks and balances, though limited, do exist.

Landcom will become a separate corporate entity if it is corporatised. The Minister will retain some control, but Landcom's board of directors will not necessarily represent the public interest. The Minister will be able to hide behind the new entity and claim in the media that the board of directors and chief executive officer, not the Minister, have responsibility for Landcom. The Greens are concerned about whether the board will be stacked with developers or people associated with developers. We question whether the close relationship that already exists between Government and the development industry will become even more murky. The Greens are also concerned because of the way in which the Australian Labor Party operates in this State.

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

Ms LEE RHIANNON: It is not rude at all. Many ALP members say the same thing these days about the New South Wales ALP. The party is causing angst to many people. Frequently the Greens have put on the record the unhealthy political donations. The Labor Party receives enormous donations every year from development corporations, and that distorts the democratic political process in a most unsavoury way. Donations buy favours and influence.

The Hon. John Della Bosca: No.

Ms LEE RHIANNON: We never fully know how that works but that is how they operate. I acknowledge the interjection of the Minister. There is a huge similarity between the names on the development projects around this town and the names on the donation sheets. There are no ifs, buts or maybes. We live in the real world and donations buy influence. For that reason the Greens will move an amendment in Committee to disqualify any person from being a director if that person is employed by, or is a director of, or is a shareholder in, or is a person who derives any financial benefit at all from a company engaged in urban development or has done so in the past 12 months. I note the laughter from the Coalition benches. This is a mild amendment. Twelve months is not a very long time and I ask the Coalition to consider my foreshadowed amendment very carefully. Many times I have spoken at meetings with members of the Coalition, and usually Mr Brogden regales people with stories about horrors of development in this State. If members of the Coalition believe those stories, surely they should do something about it, particularly if they are trying to win government. Action speaks louder than words.

This bill may well be the precursor of far more serious loss of public control—the privatisation of Landcom. When corporatisation is mentioned we are told that privatisation will not follow. However, privatisation might take a little while but sooner or later it rolls around. At this stage the Government is denying the privatisation suggestion but we know that it does not always tell the truth. Privatisation is never mentioned so it is assumed that everything will be dandy, but the Greens will continue to out the Labor Party on this issue. Perhaps the Government and the Minister have no intention of proceeding to privatisation, but there is nothing to stop a future government or Minister from pursuing that goal, and this legislation will lay the foundation for it. The Greens are deeply concerned about the structure of the bill.

Inappropriate development is a burning issue in New South Wales. Wherever I travel in this State people are agitated and want to talk about how the laws should be changed. Rather than debating this dubious

bill we should consider legislation that tightens the development process and gives the community greater protection. The general quality of urban development is very poor. Both State and local governments all too often concede far too much to developers and the result is that planning and development are driven by profit, not for public benefit or the needs of the community. The community is enormously cynical and rightly so. Ordinary people are aware of the donations, despite denials in this place. They understand that big companies do not hand out money for nothing. This appalling process is turning people off the political process.

The Greens will work tirelessly to tighten both the delivery of development to the people of New South Wales and the structuring of the political process, so that we can return integrity and democracy to this State. This bill will make the situation worse, erode public control and strengthen the hand of developers. I understand that the Hon. Richard Jones will move amendments in Committee. The Greens will support moves to introduce environmental reporting indicators and greater public scrutiny. The Greens will also move an amendment. We look forward to continuing the debate in Committee.

The Hon. RICHARD JONES [12.37 p.m.]: The Landcom Corporation Bill establishes Landcom as a statutory State-owned corporation under the State Owned Corporations Act 1989. Landcom, currently a division of Planning New South Wales, acquires, develops and sells residential land, carries out other urban development and develops commercial and industrial property. As such, Landcom plays a pivotal role in metropolitan residential, commercial and industrial development policy, particularly in complex projects such as the massive urban renewal in Green Square—or brown square—and the redevelopment of Royal Prince Henry Hospital.

The Hon. John Della Bosca: Light green square.

The Hon. RICHARD JONES: It is not green at all. It is grey and brown. There is not a tree to be seen. It is misnamed Green Square. The objectives of the bill are to ensure that the new corporation, amongst other things, exhibits a sense of social responsibility, is a responsible developer and protects the environment, but the legislation does not establish any indicators by which the corporation's performance in those areas can be assessed. However, the bill effectively overrides those worthy objectives by making the corporation's first and foremost task that of being a successful business, by providing that the board overseeing the corporation is to consist of as few as three directors, and by requiring each of them to assist the corporation in achieving all of its seven objectives. This is unacceptable as it is highly unlikely that three people will have the level of expertise needed to achieve all seven objectives. For example, potential directors are not likely to have expertise in social responsibility, environmental protection and business success.

Therefore, I will move amendments in Committee that require the board to comprise seven directors. I had intended that each of them would have expertise in one of the corporation's objective areas. However, I understand that this step will not be accepted by the Government, so I will not move an amendment to that effect. I will also move an amendment to require the corporation to publicly report annually against environmental and economically sustainable development indicators. I will move that those indicators are to be made public in their draft form, and that any submissions received are to be taken into account. I seek to make provision for the public to be able to comment during the five-year review of this Act and that the Minister take into account any such comments.

These amendments will ensure promotion of best practice in the development of modern and environmentally sustainable residential, industrial and commercial buildings. The amendments will also ensure that the board has the necessary expertise to give equal importance and consideration to each of the new corporation's objectives, and is more accountable to the public. I urge all honourable members to support the amendments.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.40 p.m.]: The bill has a series of laudable objectives and will corporatise an existing government organisation. However, many questions have been left unanswered. Landcom has not done a good job with Prince Henry Hospital and Green Square. What will be the status of the corporation? Will it be the Government's favoured developer? If so, presumably the Government will be in breach of the Trade Practices Act. If the new organisation does the Government's bidding it will become a favoured developer, and if it acts as defined in the bill it will become an autonomous corporation. If it is a competing developer, can it compete with the private sector? New South Wales power corporations, once thrown into the big swim of a deregulated market, were not able to compete in energy futures and made huge losses, at least on paper, by selling electricity at marginal prices in a steeply rising market. This Government has been glossing over trading losses made by New South Wales electricity utilities. Under this legislation, a developer who competes directly with the private sector could potentially make a loss.

What will the new entity do? Will it bring responsible development? If so, will the new entity come under the control of Planning New South Wales or will it be just another developer behaving in an irresponsible planning way in order to maximise its profits? In other words, is this camel neither one thing nor the other? I note that the Greens amendment says that no developer shall be on the board, but if that is the case the board will not have any development expertise. We might want pure white innocent angels on the board who have never done the job before, but if they do not know anything about competing in a market, the State will be vulnerable. Further, if the board is stacked with friends of the Government—Mr Carr might stack it with architects—that would be cause for considerable concern. Mr Carr always talks about the importance of architects and his desire for town planning but he adopts a laissez faire approach to Pitt Town and other areas. He does not insist that developments follow the railway lines but allows them to straggle up Windsor Road. He is happy to talk about how he wants better architecture but he allows developers to roll council planning decisions in the Land and Environment Court, which is better known as the developers' court.

These issues are not clear. There is a worrying trend towards corporatising everything without making clear the objectives of corporatisation. I cannot find any indication that Landcom will follow Government policy. Ministers will be able to say that profits are being maximised in an unfriendly development under the newly corporatised Landcom. Nothing can be achieved by a Minister acting like Pontius Pilate. If Landcom gets into difficulties the Government can say that a private corporation should not be owned by the Government and should compete in the private sector, and therefore Landcom should be privatised. That approach will stop the intermediate problem but it is the worst of both worlds. There is danger in this legislation. The bill is painted as simply seeking corporatisation, and as making a minor change to a Government department to make it more accountable. A list of laudable aims has been put forward—the Liberals have foreshadowed an amendment—including the provision that land be very cheap. That suggests considerable land releases will be necessary and that planned high-rise development will be less likely.

We are likely to see releases of quarter-acre blocks on the suburban fringes. Such releases would lead to Los Angeles-type land-use developments, which we draw back from. We do not want our cities to sprawl to their fringes and eat up good agricultural land. If that happens, agriculture will have to be carried out on less arable land. During the next 30 years economies of scale and declining world oil stocks will encourage consideration of Stockholm-type developments—relatively high-rise buildings with parkland around them—served by public transport, particularly rail. Sydney should aim for that type of development but is not doing so at present. Private developers are picking off farms and developing land wherever they can, in areas that are entirely car dependent, particularly in the north-west sector. That is very undesirable. Following corporatisation of Landcom, for example, Government land developers will have no reason to plan development along the railway line at Vineyard and Schofields. Those developers should be made to deal with smaller land-holders along the railway line and plan higher rise development rather than compete—or fail to compete—with the sprawling developments around Pitt Town and along Windsor Road.

The Hon. John Della Bosca: You don't like the words "Pitt Town", do you?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, I do not. I do not like uncontrolled development of urban sprawl in the absence of public transport planning. Creation of a corporation that will compete with the private sector for profit will make uncontrolled development far more likely. The State Government should stop being so laissez faire about land-use planning in Sydney. It should nurture a vision that in 20 years Sydney will be less car dependent. This bill is not a progressive step towards that worthy objective.

Reverend the Hon. FRED NILE [12.47 p.m.]: The Christian Democratic Party supports the Landcom Corporation Bill, which seeks to establish Landcom as a statutory State-owned corporation under the State Owned Corporations Act 1989, and sets out its principal functions and objectives. Landcom is currently a division of the Department of Urban Affairs and Planning and, together with the Department of Housing, carries out functions through the statutory entity of the New South Wales Land and Housing Corporation. I am sure all honourable members will support this bill if they think it will do something about the high price of land in the Sydney metropolitan area. By corporatising Landcom, the Government will make more money for the State. Those funds, it will be argued, will be used to pay teachers and police and for other services. Those funds should also be used to reduce the high price of land in the Sydney metropolitan area and thus assist young married couples to buy land and build their first home. The price of land in the Sydney area far exceeds that in other States. Like New York, Sydney is becoming infamous for being a most expensive city in which to live. Therefore, there is pressure on the Government to put aside the profit-making motive in corporatising Landcom. I support the objective of the Opposition's amendment, which seeks to:

> … promote orderly and economic urban development and the adequate supply of affordable and suitably located land for housing at the minimum practicable cost to consumers.

I believe those words should be added to the bill and become an objective for Landcom in fulfilling its role. The pressure will be to provide low property prices when many people wish to purchase land. That is the dilemma facing the Government. One solution that has been tried in some developments is a system whereby people ballot for low-priced land. Obviously not everyone will get the opportunity to participate, but at least a large number of young married couples will have a chance to get started. Perhaps the Government could consider that option.

The purpose of corporatising Landcom is obviously to maintain it in government ownership—this bill does not seek to privatise the organisation. It recognises the role that Landcom may play in strategic metropolitan policy, particularly in strategic and/or complex projects. The Government announced recently the opening of large areas of land in the western region towards Camden, from memory. We need such developments in order to make land available in that area. However, as honourable members have said, there must be infrastructure to support that development. We must not have a repetition of the situation in The Hills area, where developments have caused congestion on Windsor Road and so on because not enough thought was given to providing adequate public transport opportunities—road, rail and bus routes. That should be the first priority for government: there must be a plan to develop and establish infrastructure before people move into an area.

The corporatisation of Landcom will rationalise and clarify the complex framework under which the organisation operates at present. The Government hopes that it will create clear commercial objectives. I have referred to the tension between securing high prices for land and helping young families to get started. The Landcom board will have appropriate managerial autonomy. I note that the board must provide a report to the portfolio Minister within six months of the end of each financial year about the extent to which the priorities, projects, activities or outcomes set out in the statement of priorities have been undertaken or achieved by the corporation in that financial year. We obviously support that requirement, but I wonder what will happen if the Minister does not consider Landcom's performance to be satisfactory. What power will the Minister have to criticise the board of directors for not achieving the required standard and to demand changes? How will that ministerial power relate to the board's autonomy? How will the Minister exercise authority over Landcom if it is not achieving the standards required by the Government?

The bill provides for the board of directors to comprise no fewer than three and no more than seven members. An amendment proposes that there be seven directors; three members seems too few for a board of directors. The Government may be planning to have seven directors but it has the opportunity to appoint fewer than that. The problem with the amendment proposed by the Greens is how one defines a person "engaged in urban development". What does that mean? Does it refer to a company such as L. J. Hooker or to someone who develops his or her property or land? The directors of Landcom must have a proven and successful record in similar positions. There is no point in inexperienced people becoming directors of such a complex organisation; the chosen directors must have relevant experience in the field. The problem is that, if they were successful operators, they would not sit around for 12 months doing nothing in order to meet the requirements of the amendment. Appointees should come to these positions from other successful operations and, if they do not, it will raise questions about their ability in this area. The Christian Democratic Party supports the bill.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [12.55 p.m.], in reply: I thank honourable members for their contribution to debate on the Landcom Corporation Bill. As to Reverend the Hon. Fred Nile's concerns—and indirectly those of Ms Lee Rhiannon—about the board and its relationship with the Government, all honourable members will be familiar with the operation and devices of the State Owned Corporations Act, which allows shareholder Ministers to direct a board to carry out the reasonable directions of the Government in relation to the legal operation of any corporation under government ownership. The framework of this legislation will establish the parameters and behaviour of the board. The final sanction is that boards are regularly appointed by the Government and board members who do not fulfil their required functions and obligations will not be reappointed. There are appropriate sanctions for board members who either behave inappropriately or fail to fulfil their duties in a proper manner. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Part 1 agreed to.

Part 2

The Hon. DON HARWIN [12.58 p.m.]: I move:

Page 4, clause 7 (2). Insert after line 8:

, and

(c) to promote orderly and economic urban development and the adequate supply of affordable and suitably located land for housing at the minimum practicable cost to consumers.

The Coalition opposes any attempt to change Landcom's core business function from a central land release agency to a land developer competing with the private sector. The bill should reflect Landcom's traditional role as the land release arm of the New South Wales Government. Landcom's role is presently described in section 5 (1) (f) of the Housing Act, as "to promote orderly and economic urban development and the adequate supply of affordable and suitably located land for housing at the minimum practicable cost to consumers".

That description of Landcom's role was taken from the Housing Act, which was passed only a matter of months ago, and it is that model that the Opposition chose to use in its amendment. It is appropriate that Landcom's functions, which are specified in clause 7 (2) of the Landcom Corporation Bill, be widened specifically to enable Landcom to continue its central traditional role. Accordingly, a function in terms similar to the functions presently included in section 5 (1) (f) of the Housing Act should be inserted into clause 7 (2) of the Landcom Corporation Bill as a clear indication of Landcom's fundamental role in providing for the orderly release of vacant residential building land at affordable prices.

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) [1.01 p.m.]: The Government strongly opposes the Coalition's amendment as it is contrary to the entire basis of this legislation. The whole principle behind corporatisation is embodied in contrary points to those enunciated earlier by the Hon. Don Harwin. It is not the Government's intention that Landcom operate as a land bank. The thrust of the changes in the bill is to ensure that Landcom moves away from greenfields development and into complex urban development and urban renewal projects.

That is the link with the Government's urban management objectives called for by the Hon. Dr Arthur Chesterfield-Evans and other honourable members during debate on the bill. Landcom has an active affordable housing program which is effected by its smart housing project and the Victoria Park development. The Coalition's proposal, which is unworkable and which is contrary to the principles put forward in this important piece of legislation, should not attract the support of honourable members.

Ms LEE RHIANNON [1.02 p.m.]: The Greens oppose the Opposition's amendment, which, in many ways, could be called the urban sprawl amendment. It is clear that the amendment is not appropriate in this legislation or in any other piece of legislation. For the benefit of those Liberal Party supporters who read *Hansard*—I know that some people call *Hansard* a graveyard, but those who are interested in legislation actually read the debates—once again, the Opposition has not consulted with members on the crossbenches. Opposition members might have consulted with some crossbench members, but they certainly did not consult with the majority. One of the major failings of Opposition members is that they go through the motion of moving amendments but they do not put in the hard yards to determine whether they can obtain support for them. The Greens oppose this amendment.

Amendment negatived.

The Hon. RICHARD JONES [1.05 p.m.]: Madam Chair, Madam Chairperson, Madam Chairman, or whatever, I move my amendment No. 1—

The Hon. Duncan Gay: Point of order: Madam Chairman, the honourable member referred to you as "Madam Chair".

The Hon. RICHARD JONES: I referred to her as "Madam Chair" and then as "Madam Chairman". I gave her an option.

The Hon. Duncan Gay: There was not an option.

The Hon. RICHARD JONES: I will use the term "Madam Chairman".

The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin): Order! Before the Hon. Duncan Gay continues, I am Madam Chairman.

The Hon. RICHARD JONES: I move my amendment No. 1:

No. 1 Page 4, clause 8, lines 20-25. Omit all words on those lines. Insert instead:

(2) The board is to consist of 7 directors appointed by the Governor on the recommendation of the voting shareholders.

As the Government has been unable to accept the second part of my amendment as circulated, I presume that the seven directors who will be appointed to the board will be able to cover the seven principal and wide-ranging objectives of the corporation, which include having a sense of social responsibility, having regard to the interests of the community, and protecting the environment by conducting its operations in compliance with the principles of ecologically sustainable development. The corporation has many other objectives. I presume that the Government found it difficult to ensure that each director will be able to cover every one of those seven principal objectives. Naturally, the seven directors will have to cover those seven principal objectives.

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) [1.06 p.m.]: The Government accepts this amendment.

The Hon. DON HARWIN [1.07 p.m.]: As subclause (3) of amendment No. 1 of the Hon. Richard Jones as circulated has not been moved, the Opposition does not oppose the amendment.

Amendment agreed to.

[*The Temporary Chairman (The Hon. Janelle Saffin) left the chair at 1.08 p.m. The Committee resumed at 2.30 p.m.*]

Ms LEE RHIANNON [2.30 p.m.]: I move the Greens amendment:

Page 4, clause 8. Insert after line 28:

(6) However, a person is not to be appointed as a director if the person has a pecuniary interest in a company, or other person or body, engaged in urban development (other than the Corporation, the New South Wales Land and Housing Corporation or a subsidiary of either of those corporations).

(7) For the purposes of subsection (6), a person has a ***pecuniary interest*** in a company, or other person or body, if:

(a) the person is or has been, within the period of 12 months before his or her proposed appointment, a director, partner or shareholder of, or in the employment of, the company, or other person or body, or

(b) the person receives or has received, within the period of 12 months before his or her proposed appointment, any other pecuniary benefit from the company, or other person or body.

This amendment will place restrictions on those who can be appointed as directors of Landcom, which is a useful way to strengthen the legislation. The amendment will prevent a person from being appointed as a director if that person was involved in the development industry or benefited financially from that industry in the 12 months prior to his or her appointment. I emphasise that I am talking about only 12 months. The Greens are concerned that the Government may appoint as directors individuals who will, in effect, represent developers or the development industry. An examination of the way New South Wales politics has been played out in recent years provides good ground for that concern. This small measure will assist to ensure that control over urban development remains in public hands and away from those who profit from it.

The amendment would allow individuals with a background in the development industry to become directors. Let us remember, should there be any inflammatory statements, that this amendment does not exclude people from becoming directors; it provides a 12-month cooling-off period. So long as 12 months had expired and the person was sufficiently distant from any company or interest and no longer held a direct financial interest in the development industry, he or she would be free to be appointed as a director. Individuals who have worked for Landcom or the New South Wales land and housing corporation would be exempt. I strongly commend this amendment to the Committee. Obviously the earlier guffawing from the Coalition benches would

indicate that its members will not support this amendment. Sadly, that further underlines the Coalition's connection with the development industry. Sometimes Coalition members find it hard to imagine anybody not involved in the development industry, so where would we find people to be appointed as directors?

The Hon. John Hatzistergos: What about the antidevelopment industry that supports and funds you?

Ms LEE RHIANNON: I acknowledge the interjection of Mr Hatzistergos. I am not acquainted with an antidevelopment industry. I am acquainted with a group of people across New South Wales, many of whom are Labor voters and are fed up with their communities being done over. People ring us and say, "We haven't actually voted for you in the past, but our party won't listen to us. Can you talk to us about what we can do about this development?" This is a modest amendment. The major parties could show they had an iota of integrity if they saw their way free to vote for the amendment. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [2.36 p.m.]: The Government has more than an iota of integrity; it has total integrity and opposes the Greens amendment. The Government believes a wide range of expertise should be reflected in the composition of the board membership. Further, schedule 10 to the State Owned Corporations Act contains strong provisions to ensure the probity of directors of State-owned corporations, which obviously Ms Lee Rhiannon did not take into account when she gave her dissertation. She normally misses lots of things because she does not evaluate the range of issues within the context of any particular provision. For at least a dozen years we have debated those provisions to ensure the probity of directors. Those same provisions cover this situation. They include a duty of disclosure of interests and controls to prevent directors from voting on matters considered by the board in which they had a material personal interest. Accordingly, the amendment is unnecessary because its provisions are already covered in the State Owned Corporations Act.

The Hon. DON HARWIN [2.38 p.m.]: The Opposition also will not support this amendment. The legislation, as outlined by the Hon. Ian Macdonald, makes it absolutely clear why this amendment is totally unnecessary and adds nothing to the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.38 p.m.]: The Australian Democrats also do not support this amendment. While we are keen to have directors behave ethically, we are concerned that State-owned corporations simply will not be able to compete in the marketplace if it is impossible to have board members with expertise. Obviously, anybody appointed to the board has the potential for a conflict of interest and would be watched carefully. Certainly we would want guarantees that such positions would not be used in a "mates" situation. Whatever the composition of the board, there is danger that joint ventures will be tainted and the objects of good planning and making a great deal of money will come into conflict. I pointed out in my second reading speech that we were concerned about the whole concept. Our other concern is that the board will lack expertise. If that is the case, that will be an even worse problem, even if the board is trying to do the right thing. On balance, we do not support this amendment.

Reverend the Hon. FRED NILE [2.40 p.m.]: In my speech on the second reading I made some remarks about the need to have people with experience and expertise on the board. We do not support the Greens amendment.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 3

Mr Breen

Tellers,
Mr Cohen
Ms Rhiannon

Noes, 29

Ms Burnswoods	Mr Gay	Dr Pezzutti
Dr Chesterfield-Evans	Mr Harwin	Mr Ryan
Mr Colless	Mr Hatzistergos	Mr Samios
Mr Corbett	Mr M. I. Jones	Mrs Sham-Ho
Mr Dyer	Mr R. S. L. ones	Mr Tsang
Mr Egan	Mr Macdonald	Mr West
Ms Fazio	Mr Moppett	Dr Wong
Mrs Forsythe	Mrs Nile	*Tellers,*
Mr Gallacher	Reverend Nile	Mr Jobling
Miss Gardiner	Mr Pearce	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Part 2 as amended agreed to.

Parts 3 and 4

The Hon. RICHARD JONES [2.49 p.m.], by leave: I move my amendments Nos 2 and 3 in globo:

No. 2 Page 8. Insert after line 34:

14 Environmental reporting indicators

(1) The portfolio Minister is from time to time to adopt environmental reporting indicators, including environmentally sustainable development indicators, for use by the Corporation.

(2) The indicators must include a methodology for making comparisons to international best practice in environmentally sustainable residential, commercial and industrial development.

(3) Before adopting any environmental reporting indicators, the portfolio Minister:

(a) must cause notice of the proposed indicators to be published in a daily newspaper circulating throughout the State, and

(b) must cause copies of the proposed indicators to be made available for public inspection on the Corporation's website and at each of the offices of the Corporation, and

(c) must allow a period of at least 30 days for members of the public to send written comments to the portfolio Minister in relation to the proposed indicators, and

(d) must take any such comments into consideration.

(4) The Corporation must monitor its activities against the environmental reporting indicators and must compile data on those indicators.

(5) The Corporation is to publish an annual report that sets out the results of the monitoring referred to in subsection (4).

(6) Copies of the report are to be made available for public inspection on the Corporation's website and at each of the offices of the Corporation.

No. 3 Page 12, clause 21. Insert after line 4:

(2) The Minister is to make arrangements for public comment on the Act and consider those comments as part of the review.

Amendment No. 2 requires the corporation to report publicly on an annual basis against environmental and environmentally sustainable development indicators. Those indicators are to be made public in draft form, and any submissions received are to be taken into account. This amendment will ensure that best practice in development of modern environmentally sustainable residential, industrial and commercial buildings is promoted by the new Landcom Corporation. Amendment No. 3 provides for the public to be able to comment during the five-year review of the Act and the Minister to take into account any such comments. This amendment will ensure that the new Landcom corporation is more accountable to the public.

The Hon. IAN MACDONALD (Parliamentary Secretary) [2.49 p.m.]: The Government supports these amendments.

Amendments agreed to.

Parts 3 and 4 as amended agreed to.

Schedules 1 to 4 agreed to.

Title agreed to.

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

STANDING COMMITTEE ON LAW AND JUSTICE

Reference: Child Sexual Assault Prosecutions

The Hon. RON DYER [2.54 p.m.]: In accordance with paragraph 14 (2) of the resolution establishing standing committees of 25 May 1999, I inform the House that the Standing Committee on Law and Justice has this day received the following reference from the Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts:

The Standing Committee on Law and Justice is to inquire into and report on:

The circumstances surrounding the prosecution of child sexual assault matters, including:

(1) communication between the police and the complainant, and the complainant and the prosecution concerning the consequences of pursuing a prosecution for child sexual assault;

(2) the role of sexual assault counsellors in the complaint process;

(3) the impact of the application of the rules of evidence, other legislative provisions and court practices in prosecutions for child sexual assault offences;

(4) alternative procedures for the prosecution of child sexual assault matters including alternative models for the punishment of offenders;

(5) possible civil responses to perpetrators and victims of child sexual assault;

(6) appropriate methods of sustaining ongoing dialogue between the community, government and non-government agencies about issues of common concern with respect to child sexual assault; and

(7) any related matter concerning approaches to child sexual assault in the justice system.

COAL INDUSTRY BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [2.56 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The introduction of the Coal Industry Bill 2001 is a significant moment in the history of the coal industry in NSW.

The Bill represents a break from the past, with new arrangements for the delivery of critical services to the coal industry such as occupational health and safety, workers compensation, and mines rescue.

These services are currently provided by the Joint Coal Board—an agency jointly governed by the Coal Industry Acts of the Commonwealth and New South Wales—and the NSW Mines Rescue Board.

The new arrangements set out in this Bill are necessary because the Commonwealth Government no longer considers that it has a role in the oversight and administration of the coal industry in this State. It has therefore decided to repeal the Commonwealth's *Coal Industry Act 1946* and withdraw from its involvement with the Joint Coal Board.

Indeed, the Federal Parliament has already passed the *Coal Industry Repeal Act 2001*. It is important to note that the Federal Government has undertaken to commence this Act only when these proposed reforms in NSW are in place.

As a result of the Commonwealth's decision, the NSW Government has decided to effectively repeal the NSW *Coal Industry Act 1946* and the *Mines Rescue Act 1994* to make way for the new arrangements.

Current functions of the Joint Coal Board and the Mines Rescue Board will be performed by industry-owned and operated companies, which are to be approved by the relevant NSW Minister for the purpose. The industry parties will thereby take direct responsibility for the former functions of these Boards.

The Bill represents a significant agreement between the NSW Government, the Construction, Forestry, Mining and Energy Union, and the New South Wales Minerals Council.

It also represents an agreement between the Commonwealth and the NSW Government that all of the resources currently attributable to the Joint Coal Board are to be quarantined and used solely by the new company or companies approved by the Minister to exercise the functions of the Joint Coal Board. This agreement is important, as the Commonwealth Government is currently jointly responsible for the Joint Coal Board under the mirror Commonwealth and NSW legislation.

At the outset, I wish to congratulate the representatives of the CFMEU including Ron Land and Tony Maher and the NSW Minerals Council including John Tucker, Denis Porter, Kieran Turner, Bob Cameron and Ugo Cario as well as the Joint Coal Board Chairman, Mr Ian Farrar, for their time and effort over the last couple of years in negotiating the complex and time consuming details of these new arrangements.

It is well understood that the coal industry has played a key role in the economic development and growth of NSW and Australia.

In the year 2000 the value of NSW coal exports was around $3.4 billion, and the NSW coal industry employs around 9,700 coal miners.

The industry remains vital to the economic and social wellbeing of regional communities in NSW, as well as to the economy of both NSW and Australia.

However, sadly, the industry has had a notorious safety record.

It is for these reasons that this Bill is of such significance to coal mine workers and their families and communities, as well as to the coal mine operators who contribute to the economy of this State and Australia through local investment, and export earnings.

To properly appreciate these reforms, it is necessary to understand a bit about the history of the coal industry in NSW during the last century.

In the wake of World War II, coal was a critical energy source for growth industries in Australia.

However, the high demand for coal was frustrated by a number of serious problems in the industry such as inefficiencies in production, extremely poor health and safety conditions, and worn out and dated equipment.

In 1946 Premier William McKell described the coal industry as one that had been 'tragically neglected' with 'entirely obsolete' equipment; workshops in a 'neglected condition' and with workers unduly exposed to weather conditions and bad ventilation systems.

Not surprisingly, industrial unrest in the coal industry was common.

People may remember the national coal strike of 1949 when the supply of coal was severely restricted and industries such as manufacturing and construction were almost brought to a standstill.

At that time coal was Australia's most important energy source. Coal powered industry—it lit and heated homes and businesses.

Hydro-electric power, via the great Snowy Mountains Scheme was only a dream of the future.

However, many at the time believed coal miners were exploited and each new generation of miners carried with it memories of conflict and legacies of bitterness.

Working conditions in the pits were terrible. Coal miners worked in a world of darkness hundreds of metres below ground. They often had to creep long distances in dusty passages to reach the coalface.

Mines had poor ventilation and drainage. Basic amenities such as change-rooms, showers and medical facilities were often absent. In 1946 only five out of 14 operating coal mines in NSW had adequate bath house facilities for the miners.

Tragically, dust diseases were common, and some miners were incapacitated before they were 30 years of age. The health and welfare of coal miners was clearly a major concern.

In the mid-1940s the coal industry was also inefficient. A high percentage of coal deposits underground did not reach the surface. At ten of the large mines operating in the Greta seam in the Hunter it was estimated that only 34% of existing holdings could be recovered using the system of the time.

Inquiries and commissions had recommended reform of the industry but little had been done. However, in 1929 the Davidson Royal Commission recommended a board to oversee the industry and this formed the basis for the joint legislation of 1946.

Thankfully, both Federal and State politicians of 1946 well understood the problems facing the industry. They had the will to implement reforms.

Ben Chifley, the Prime Minister in 1946 represented the western coalfields of NSW.

In the NSW Labor Cabinet of 1946, six members had a mining background. Three out of the six had worked underground.

In 1946 NSW and the Commonwealth were thus able to co-operate for change with the enactment of mirror Coal Industry Acts. The legislation was designed to address industry problems with the formation of 2 new bodies.

The Coal Industry Tribunal was established to resolve industrial relations disputes. In 1995, the administration of the Coal Industry Tribunal was transferred to the Australian Industrial Relations Commission through complementary Commonwealth-New South Wales legislation.

The Joint Coal Board was established in 1947 to assist with the restructure and modernisation of the NSW coal industry, the development of coal resources and supply, and the improvement of the welfare of coal miners.

In 1946 Premier William McKell stated in his second reading speech to the NSW Bill that the Joint Coal Board:

> …will have power in respect of the establishment of sound industrial welfare practices, including the provision of amenities for employees in the coal industry.

Early reports of the Joint Coal Board record the allocation of funds to support a variety of facilities and services in mining communities, such as recreational facilities, halls and libraries, baby health centres, cultural activities, medical equipment, and road repairs.

The establishment of the Joint Coal Board still stands as the most comprehensive and positive move by Government to reform the coal industry in New South Wales—a significant outcome given the crucial role of coal in Australian life.

If you visit NSW mining communities today you can find plaques indicating that a particular project was supported by the Joint Coal Board.

Right up until the present time the Joint Coal Board has continued such assistance to coal mining communities in NSW.

The Joint Coal Board can also claim credit for the elimination in NSW coal fields of the illness known as Black Lung or Pneumoconiosis. Some 16% of miners suffered from this disease in 1946. This disease has now virtually been eliminated.

The Joint Coal Board has clearly played a significant role in the economic viability of the coal industry in NSW and in improving the health and welfare of coal miners and their local communities.

Today, the Joint Coal Board continues to meet its charter through the provision of occupational health and rehabilitation services such as health assessments, injury management, work environment monitoring, health education services and a vocational retraining program.

Coal Mines Insurance, a wholly owned subsidiary of the Joint Coal Board, provides workers compensation insurance services to all coal mines in NSW.

However, as I mentioned earlier, the Commonwealth Parliament has now passed legislation which will end the involvement of the Federal Government with the Joint Coal Board. I note again that the Federal Government has agreed not to commence this legislation until NSW has its legislation in place for the new arrangements to commence.

As previously mentioned, this Bill will also repeal the *Mines Rescue Act 1994.*

The need for a mines rescue service has also played a significant role in the NSW coal industry.

In 1926 mines rescue facilities were established in NSW for underground coal mines under the *Mines Rescue Act 1925*.

The 1925 Act stemmed from political, industrial and social reaction to the occurrence of a number of mine disasters in NSW coal mines over the preceding thirty years.

The Act established four rescue stations, one in each of the four proclaimed coal mining districts of NSW. It provided for an independent committee in each district to administer its own provisions.

In 1972 the Mines Rescue Board was established as a body corporate with the primary purpose of obtaining contributions from coal mine owners for payment into the Central Mines Rescue Fund. This fund provided for the establishment, operation and maintenance of rescue stations.

The *Mines Rescue Act 1994* reconstituted the Mines Rescue Board as a statutory body representing the Crown. Objectives of the Board were the provision of a rescue service to deal with emergencies arising at underground coal mines in NSW, and the use of the rescue service in connection with emergencies at other mines.

In 1994 the Board was established with 7 directors and a chief executive. The former district committees were disbanded, generating an improvement in mobilisation of resources and communication between stations.

The Coal Industry Bill provides for an approved company—the mines rescue company—to take over the current functions of the Mines Rescue Board. The Board of the mines rescue company will have representatives of both the CFMEU and the NSW Minerals Council, as well as independent directors.

Having explained the background to the Coal Industry Bill 2001, I turn now to the Bill's provisions.

Part 2 and Schedules 2 and 3 of the Bill provide for the dissolution of the Joint Coal Board and the Mines Rescue Board. These provisions also provide for the transfer of the assets, rights and liabilities of these Boards to an approved company or companies via the Ministerial Holding Corporation established under the *State Owned Corporations Act 1989*. The approved company or companies will take over the functions of the dissolved Boards.

At this point it is important to note that the proposed new industry arrangements will not disadvantage members of staff of the Joint Coal Board or the Mines Rescue Board. Schedules 1 and 4 of the Bill expressly provide for the transfer of staff to a specified approved company while preserving current salaries and conditions of employment, including leave and superannuation entitlements.

Staff of the Joint Coal Board currently contribute to an assortment of State Government superannuation schemes. Arrangements have been made for them to transfer to an appropriate scheme within the Energy Industries Superannuation Scheme which provides mirror benefits to those provided under the various State schemes. Staff of the Mines Rescue Board will continue to contribute to their current scheme.

Part 3 of the Bill enables the Minister to approve one or more companies registered under the Commonwealth's *Corporations Act 2001* for the purpose of exercising one or more functions set out in the Bill. It is important to note that a company cannot be approved unless it is wholly owned in equal shares by the CFMEU and the NSW Minerals Council, or a subsidiary thereof, or if it is a wholly owned subsidiary of another approved company that is so owned.

The Minister can also only approve one company at a time to provide mines rescue services, and one company to establish, administer or provide workers compensation services.

An approved company must exercise those functions set out in its notice of approval. The functions that can be the subject of such a notice are set out in clause 10 (1) of the Bill, and reflect the functions currently provided by the Joint Coal Board and the Mines Rescue Board.

Broadly, these functions include:

- providing occupational health and rehabilitation services for coal industry workers;
- promoting the welfare of coal industry workers, including monitoring and promoting matters (including the approval of training schemes) relating to the health and safety of those workers;
- monitoring dust in coal mines;
- establishing, administering or providing workers compensation insurance schemes in relation to coal industry workers;
- establishing, administering or providing administrative services in respect of industry superannuation schemes for coal industry workers and employees of approved companies;
- mines rescue services; and
- the collection, collation and dissemination of industry statistics, including statistics relating to the health and safety of coal industry workers.

An approved company may also exercise other specified or ancillary functions for which it has no specific notice of approval. These functions are set out in clause 10 (2) and clause 11 of the Bill.

The corporate governance arrangements for any company approved under this Bill are clearly important for the success of the new scheme. It is therefore necessary to note that any approved company will be fully subject to the regulatory regime of the Commonwealth's *Corporations Act 2001* as a proprietary company.

I also refer Honourable Members to Schedule 5 of the Bill, which, among other things, provides for the composition of the Board of Directors of any approved company. The seven directors of each approved company will be appointed by the Minister.

Clause 5 of Schedule 5 to the Bill stipulates that two such directors are to be nominees of the CFMEU, two will be nominees of the Minerals Council, and two will be independent directors having relevant expertise who are nominated jointly by the CFMEU and the Minerals Council.

The seventh director will serve as the Managing Director and Chief Executive Officer and he or she will be externally appointed from among persons nominated by the other directors.

All appointments to a Board are for a maximum, although renewable, term of 5 years.

The Bill provides for a transitional provision relating to the appointment by the Minister of Industrial Relations of up to six months for the Managing Director and Chief Executive Officer whilst a proper and comprehensive recruitment exercise is undertaken in respect of a permanent appointee.

The Chairperson of Directors will be appointed on a rotational 2-year basis between a CFMEU director and a Minerals Council director.

These corporate governance arrangements provide for the approved companies to operate effectively free of Ministerial control. This is entirely appropriate for companies that are to be governed by the *Corporations Act*.

Indeed, I draw the attention of Honourable Members to clause 51 of the Bill which leaves it in no doubt that an approved company is not an instrumentality or agent of the State and cannot render the State liable for any debts, liabilities or obligations of the company.

However, the relevant Minister will have the capacity under this legislation to monitor or oversight the proper exercise by approved companies of the functions to be carried over from the Joint Coal Board and the Mines Rescue Board.

For example, I refer Honourable Members to clause 10 (1) (e) which provides that an approved company must report to the Minister when requested on matters arising out of its functions, if such a reporting function is specified in its notice of approval.

Further, I note that the relevant Minister has the capacity to comment on the draft annual operating plan of an approved company under clause 4 of Schedule 5. An approved company must note any comments made by the Minister and consider whether the plan should be amended before being adopted. This provision will enable the Minister to satisfy himself or herself that the strategy of an approved company properly reflects its functions.

The Bill also contains the following measures to ensure the proper and transparent exercise of functions by approved companies.

- Clauses 1 and 2 of Schedule 5 provide that the constitutions of the approved companies are to be subject to this legislation.

- If an approved company exercises functions of both the Joint Coal Board and the Mines Rescue Board, separate funds are to be maintained in respect of those functions.

- Certain decisions, determinations and orders of an approved company relating to the health and safety and other functions of a company will be subject to the review processes of the NSW Administrative Decisions Tribunal.

- Clause 22 provides that the company approved to provide mines rescue services cannot charge fees for services in the exercise of its principal mines rescue functions, which are set out in clause 14.

- Division 5 of Part 3 provides that an approved company may appoint an employee or an officer as an inspector for the purpose of assisting the company to exercise its functions—such as ensuring that an order has been complied with. An approved company must provide the Minister with a list of the names of people so appointed.

- Clause 49 provides that proceedings for an offence against the Act or the regulations may be instituted by the Minister or the Director of Public Prosecutions.

- Finally, reserve regulation-making powers under clause 53 enable the relevant Minister to regulate, among other things, acts or omissions of an approved company. This power will of course be subject to the Commonwealth's *Corporations Act 2001*, and other Federal legislation that applies to the operations of proprietary companies.

While the approved companies with functions under this Bill will be legally and financially independent of the NSW Government, it is clear from provisions in the Bill just described that the NSW Government will retain oversight functions of the companies. This is to ensure that the proposed arrangements continue to work in the best interests of coal mine workers and coal mine owners alike.

A further important aspect of this Bill is the provision for an approved company to provide workers compensation services to the industry. As noted earlier, Coal Mines Insurance—a wholly owned subsidiary of the Joint Coal Board—is the workers compensation insurer for the NSW coal industry.

The workers compensation scheme provided by Coal Mines Insurance is fully funded, and it maintains its financial position through adjustments to premiums from time to time.

It is proposed that an approved company under the Bill will continue to be the workers compensation insurer for the industry.

In this regard, clause 31 of the Bill states that the workers compensation company has the power to require any NSW coal industry employer to effect with or through that company all workers compensation insurance in respect of the employer's employees in the industry.

This provision will enable the retention of the workers compensation monopoly—which is currently provided for under the *Coal Industry Act 1946*.

It is considered necessary to retain the status quo in this regard, to provide for ongoing stability in the industry, and to retain the benefits of the industry specific workers compensation fund.

Indeed, last year, an independent review of the workers compensation arrangements for the NSW coal industry—the Grellman Report—recommended that the fund operated by Coal Mines Insurance remain separate from WorkCover.

This was because it was considered that transferring the special coal industry workers compensation arrangements into the general State workers compensation scheme would be unlikely to materially reduce costs for coal industry employers.

It is also important to note that the monopoly arrangement is specifically authorised by clause 31 (3) of the Bill for the purpose of the Commonwealth's *Trade Practices Act 1974*.

However, the Grellman Report did recommend that an independent review be undertaken of Coal Mines Insurance one year after the establishment of the new company's Board under the proposed reforms to evaluate re-structuring efforts intended to properly realise the benefits of industry specialisation.

Moreover, the Grellman Report recommended a further independent review of the monopoly arrangement after 2 years.

This Government supports the Grellman recommendations, and the conduct of these independent reviews one and two years after the establishment of the new company to take over the workers compensation functions of Coal Mines Insurance. As noted, the review at the end of 2 years should critically assess the monopoly arrangement in the context of the most efficient delivery of workers compensation services to the coal industry in NSW.

I am pleased to inform Honourable Members that the Joint Coal Board has already taken steps to implement recommendations in the Grellman Report for the restructure and more efficient delivery of the services of Coal Mines Insurance as its subsidiary.

As one of its first tasks the new corporation will be responsible for undertaking a review into safety and related matters of concern to the two major stakeholders—namely the CFMEU and the Minerals Council. The outcome of this review will be useful input into any future review into workers' compensation, particularly as it affects NSW coal miners.

As noted earlier, this Bill provides for an approved company—referred to in the Bill as the mines rescue company—to take over the functions of the current Mines Rescue Board.

In this regard, Division 3 of Part 3 of the Bill dealing with the principal functions of the mines rescue company, and Part 4 of the Bill dealing with the NSW Mines Rescue Brigade largely reflect current provisions of the *Mines Rescue Act 1994*.

As is currently the situation, owners of coal mines will pay contributions to the mines rescue company in accordance with clause 19. These contributions are to defray the costs incurred by that company in conducting its principal rescue functions set out in clause 14.

These principal rescue functions include:

- The provision of rescue services to deal with mine emergencies, and ensuring that the Brigade has the capacity to deal with such emergencies;

- Ensuring that adequate rescue equipment is available to the Brigade; and

- Training Brigade members in the proper procedures, including the use of breathing apparatus.

Levels of contributions to be made by different coal mines will be determined by the approved company having regard to matters set out in clause 19 of the Bill.

Clause 20 of the Bill provides that the mines rescue company must, for each year, serve on each owner of a coal mine, a notice specifying the amount that each owner is required to pay under clause 19, the method by which that amount has been determined, and the date by which the amount must be paid.

Part 4 of the Bill deals with the establishment and operation of the New South Wales Mines Rescue Brigade. It is important to note here that the savings and transitional provisions of the Bill provide that the Brigade is a continuation of the NSW Mines Rescue Brigade established under the *Mines Rescue Act 1994*.

As such, a person who is a member of the Brigade before the proposed repeal of the *Mines Rescue Act* will be taken to be a member of the Brigade established under this legislation.

Having explained the substantive provisions of the Bill, Honourable Members will be aware that the Bill also contains other related provisions, including the proposed amendment of related Acts and the necessary savings and transitional provisions.

This Bill represents a unique opportunity for the coal industry in NSW to take direct responsibility for the administration, delivery and financing of occupational health and welfare, workers compensation, training and mines rescue services. The industry parties will be given the chance to run their own affairs through private companies owned and managed by industry representatives for this very purpose, rather than a government agency.

Although the approved companies will be privately owned and operated, they will of course be subject to various requirements under this legislation. This is only right considering the health and safety of coal miners is at stake. However, the onus to make this new scheme work will clearly be on the industry parties.

The Bill is a result of lengthy negotiations and final agreement between the NSW Government, the CFMEU and the NSW Minerals Council.

The Coal Industry Bill 2001 is an innovative response by NSW to the Commonwealth Government's decision to withdraw from its involvement with the Joint Coal Board.

It sets in place arrangements to secure a safe, viable and competitive future for the coal industry in NSW.

I commend the Bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [2.57 p.m.]: The Opposition is pleased to support the Coal Industry Bill. At one time we did not think the bill would get here so soon; at other times we thought that as it has taken so long to get here we might not be able to support it when it finally arrived. It is ironic that the Minister who has carriage of this bill has incorporated the speech made by another Minister in another place. Sometimes I cannot understand how the Government works. Indeed, I am sure that at times Government members have trouble understanding how the Government works. As I said, this bill has been a long time coming. It was drafted and finalised in close consultation with both the industry and the trade union movement. Indeed, when I took over as shadow Minister for Mineral Resources in January 2000 this was the first issue on which the then Executive Director of the Minerals Council, Denis Porter, briefed me.

That is a fair indication of the time it has taken for this bill to make it into the New South Wales Parliament. I am pleased that the Government took the time to get this one right, instead of just pushing it through with undue haste. Before I proceed, I draw the attention of honourable members to the contribution to the debate in the other place by my colleague the honourable member for Burrinjuck, who has taken over the role of representing me in that House. Her contribution was magnificent.

The Hon. Richard Jones: Is she doing a better job than you are doing?

The Hon. DUNCAN GAY: She may do a better job than I do, but I do not say that she did a better job than George Souris, who formally represented me, did—nor would I! The New South Wales coal industry is a major employer in this State. Some 9,500 workers are involved in the industry, with coalmining accounting for more than 70 per cent of total income from mining in New South Wales in 1999-2000. There is estimated to be 10 billion tonnes of recoverable coal reserves in the State, with coalmining being fundamental to the economies of regions including the Hunter Valley, the Illawarra, Lithgow and Gunnedah. That is why this bill is important. That is why it is essential that this bill gets it right in regard to future directions for the coal industry, occupational health and safety, workers compensation and mines rescue functions.

The bill is a significant departure from the current industry structure. It will wind up the operations of the Federal-State administered Joint Coal Board [JCB], which currently provides occupational health and safety, mines rescue and workers compensation functions to the coal industry. The Federal Government has signalled its intention to withdraw from the JCB, and the Federal Parliament has already passed the Coal Industry Repeal Act 2001. That Act awaits the passage of this State legislation prior to its proclamation. The bill will repeal two pieces of State legislation: the Coal Industry Act 1946 and the Mines Rescue Act 1994. Significantly, the bill allows for the establishment of two industry-owned and industry-operated companies that are subject to the approval of the relevant Minister of the day.

What is proposed is a major shift away from a joint government-owned coal board structure to a position where the industry takes a large step forward into private provision of critical services but with government oversight. As I stated earlier, the bill is the result of significant negotiation by the Government, in most instances represented by the Minister for Industrial Relations, with the New South Wales Minerals Council and the Construction, Forestry, Mining and Energy Union [CFMEU]. It has been a complex process and I take this opportunity to thank the New South Wales Minerals Council for keeping me up to date with the progress of the negotiations. I also indicate that the Minister, through his office, briefed me on many occasions. The Executive Director of the Minerals Council, John Tucker, wrote to my office last week after the bill was introduced in the other place. I do not understand why the Minister with carriage of the bill would allow another Minister to introduce it. Mr Tucker stated in part:

> We—the Minerals Council—are fully committed to working constructively as a co-owner of the new Coal Service Proprietary Limited to execute its functions effectively whilst driving a short, medium and long term reform program.

I spoke earlier of the important employment and financial benefits of coalmining in New South Wales. But, as has been noted by speakers in the other place, that impressive and important record has a downside—a safety record that has been marked by serious injury and disability to workers and many deaths of workers over long periods of time. Whilst I acknowledge the excellent work being done by many companies across the State to improve their lost time injury rates and to look after the safety of their workers, one thing remains constant: the very nature of coalmining presents safety issues. That is why the bill is important. It removes the Joint Coal Board and, by necessity, replaces core functions essential to the safety and wellbeing of coalminers across New South Wales.

The bill repeals the Mines Rescue Act 1994, implementing instead an industry-owned company to be known as the Mines Rescue Company, which will take over the functions of the Mines Rescue Board. That

company will be entirely responsible for the provision of mines rescue services across the coalmining districts of the State, and will also have a role to play in rescue operations at mines when the need arises. Turning to the specific provisions of the bill, schedules 2 and 3 provide a framework for the dissolution of the Joint Coal Board and the Mines Rescue Board. Under the dissolution, the assets, rights and liabilities of these boards will be transferred to the approved industry-owned companies via the ministerial holding corporation that operates under the State Owned Corporations Act 1989.

I am pleased that the dissolution of the Joint Coal Board and the Mines Rescue Board will not adversely affect the staff of the two organisations. Schedules 1 and 4 will ensure that the staff are transferred to the approved companies. They specify the retention of current salaries and conditions. I understand arrangements have also been made for employees of the Joint Coal Board to transfer their superannuation to an approved scheme, while the staff of the Mines Rescue Board will remain with their current scheme. Part 3 will establish the industry-owned and industry-operated companies to which I referred earlier. This is an integral part of the legislation, and is the core tenet of the bill. Part 3 will allow the Minister to approve one or more companies registered under the Commonwealth Corporations Act 2001 for the purpose of exercising one or more functions set out in the bill.

Put simply, that is the mechanism for setting up the Mines Rescue Company and the Coal Service Corporation. Importantly, any company proposed under this legislation cannot be approved by the Minister unless it is wholly-owned in equal shares by the New South Wales Minerals Council and the CFMEU, if it is a subsidiary thereof, or if it is a wholly-owned subsidiary of another approved company that is so owned. The Minister can only approve one company at a time to provide mines rescue services, and one company at a time to provide workers compensation services. A company must provide functions that are set out in its notice of approval. The functions that can be included in a notice of approval are set out in clause 10 (1). They broadly reflect the current functions of both the Joint Coal Board and the Mines Rescue Board. Clause 10 (2) and clause 11 set out other ancillary functions that the companies may engage in.

Schedule 5 relates to the boards of the approved companies that will operate under this legislation. This is an important schedule, and one that I understand has been the subject of vigorous and lengthy debate between the Government, the Minerals Council and the union. The bill provides that the board of directors for any company operating on the approval of the Minister must contain two directors nominated by the Minerals Council, two directors nominated by the CFMEU, two directors with appropriate expertise jointly nominated by the Minerals Council and the CFMEU, and a seventh director who will serve as managing director and chief executive officer. This particular director will be recruited externally from a group of people nominated by the other directors. All board appointments will be for a period of five years. The fill provides further that the Minister for Industrial Relations may appoint, for six months, a transitional managing director and chief executive while the recruitment and appointment process is finalised.

I am sure all honourable members realise that, while the details of the arrangement were easy to say at the end of the process, there would have been considerable negotiation by the employers, the union and the Government before they were finally arrived at. The corporate governance arrangements enacted by the bill are seen by the Opposition as the best possible way for the new companies to operate free of government control. While there will still be a degree of government oversight through the Minister for Industrial Relations, the companies are, for the most part, left to their own devices. The bill makes no bones about that: clause 51 sets out that the State is not liable for any debts, liabilities or obligations of the companies constituted under the bill. But, at the same time, the companies may be required to report to the Minister on matters arising out of the functions that they conduct that are carried over from the Mines Rescue Board and the Joint Coal Board.

The Opposition is satisfied that the companies constituted under this bill will be financially and legally independent from the Government. We are also satisfied that the new arrangements leave in place a degree of government oversight that should—and I emphasise that—provide the appropriate degree of scrutiny to ensure that the new arrangements are in the best interests of coalminers and coalmine owners and operators. A large part of the bill deals with the arrangements that will be put in place for coalminers workers compensation. Coal Mines Insurance [CMI], which at present is a wholly-owned subsidiary of the Joint Coal Board, is the sole provider of workers compensation insurance for the New South Wales coal industry.

Whilst my colleague Leader of the Opposition and shadow Minister for Industrial Relations will make an intellectual contribution about the provisions in the bill as they relate to coalminers workers compensation and the work of the CMI, I will state that the Opposition is also satisfied with the structure proposed in the bill, despite the fact that on previous occasions we have called for coal mines insurance to be brought into the general workers compensation scheme. We recognise the need to maintain stability in the coal industry, and as such support the need for an industry-specific workers compensation fund.

Mr Acting-President, I note that on some occasions some members incorrectly use the term Acting-President rather than Deputy-President, but on this occasion you are Acting-President when the President is out of the State. It is my understanding that the President is out of the State at the moment. In case that was not on the record, it is now.

As I stated earlier, a key provision of the bill will be the establishment of a company to provide mines rescue services to the coalmining sector. Part 4 of the bill deals specifically with the establishment of that company. The bill allows members of the Mines Rescue Brigade, which is established under the Mines Rescue Act of 1994, to continue to be a member of the brigade that will operate under this bill. That is important. It will ensure that mines rescue functions will continue to be carried out by dedicated professionals. And because the new company will have the assets of the former brigades, the best possible equipment will be available for use by those brigade members.

I take this opportunity to pay particular tribute to all those involved in mines rescue across the State. They have an important, demanding role in conditions that are often dangerous to themselves, and they do their job to the very best of their ability in order to protect their fellow coalminers. This bill is an appropriate response to the Commonwealth's decision to withdraw from the Joint Coal Board. It will allow the industry participants to "own" the companies that provide core services to the coalmining sector. It is an important transition for the State and for the coalmining industry as a whole. I thank John Tucker and his predecessor Denis Porter, along with Kieran Turner and Susan Streeter, from the New South Wales Minerals Council, for keeping me abreast of developments with the bill. I know that the Minerals Council is keen to see the bill implemented, and I am sure that the CFMEU will be equally keen to see the new arrangements finalised. With those comments, I compliment the Minister and confirm the Opposition's support for this important bill.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [3.15 p.m.]: I endorse the comments of the Deputy Leader of the Opposition, the shadow Minister for Mineral Resources, the Hon. Duncan Gay. The Coalition supports the bill. We have held detailed and fruitful discussions with the Minerals Council, which fully supports the bill. I understand that the Construction, Forestry, Mining and Energy Union [CFMEU] also endorses the bill.

The Hon. Richard Jones: Have you consulted with the union as well?

The Hon. MICHAEL GALLACHER: No, through a medium, actually. We are still waiting for their response.

The Hon. John Della Bosca: They are not dead.

The Hon. MICHAEL GALLACHER: Minister Della Bosca has been trying.

The Hon. John Della Bosca: I have met them once or twice out the back.

The Hon. MICHAEL GALLACHER: You were running at the time, with a big bull's-eye on your back. As my colleague has indicated, I will speak specifically to the workers compensation aspects of the bill. I feel that this is particularly relevant in light of the recent passage of further changes to the general workers compensation scheme. Within the last fortnight the Workers Compensation Legislation Further Amendment Bill was passed. The Government has indicated its intention to introduce its third tranche of workers compensation reforms involving the WorkCover administration sometime next year. Workers compensation in the coal industry is distinct from the main New South Wales workers compensation scheme that covers the rest of the State's employees. This is an arrangement that both the key stakeholders, the New South Wales Minerals Council and the relevant union, the mining division of the CFMEU, wish to maintain. Under section 27 of the Coal Industry Act 1946 the Joint Coal Board has the power to establish workers compensation insurance schemes and to require an employer in the coal industry in this State to effect, with or through the board, all workers compensation insurance for its coal industry employees. The instrument of that intention is Coal Mines Insurance Pty Ltd, a monopoly operation of the Joint Coal Board that provides workers compensation insurance to all coalmining operations in New South Wales.

Section 35C of the Act provides direction on the applications to which premiums and other money received under the workers compensation insurance scheme can be used. The coal industry workers compensation scheme is fully self-funded in terms of deficit issues. Honourable members would be well aware that that situation is quite unlike the situation with the mainstream workers compensation scheme in New South

Wales, for which the Government continues to deny having responsibility. But that is not to say that everything is perfect in the coal scheme. As with the general workers compensation scheme, the cost for workers compensation in the coal industry has also been increasing. As of 1 October 2001 there has been a 30 per cent increase in the average premium in the industry. Premiums rose from about 9 per cent of payroll to about 12 per cent on average. And indeed the New South Wales Minerals Council has advised that many companies that it represents, whether they are large or small, cannot handle such an increase. The pressures of rising workers compensation costs affect employers in the coal industry just as in the general scheme. Additionally, just as in the general scheme, concern has been raised about the structure of the scheme, particularly in relation to cost drivers.

The Government has accepted the recommendations of the KPMG Independent Review of Workers Compensation Arrangements for the New South Wales Coal Industry, otherwise known as the Grellman report, to continue workers compensation monopoly arrangements. The coalition is pleased that the Government will be implementing some of the report's other recommendations in relation to the new arrangements. It is to these that I now turn. Clause 9 prevents the Minister from approving two or more companies to provide workers compensation insurance schemes in relation to workers engaged in the coal industry. That is, there will be a single company providing workers compensation to the coal industry just as at present. Clause 24 indicates the purposes to which the premiums and other money received by the workers compensation company established by the bill must be applied. It effectively covers what is dealt with by section 35C in the 1946 Act.

However, I note a particularly interesting aspect of this provision in clause 24 (2). This permits the approved workers compensation company, in the event of a deficit in the scheme, to require the employer to pay to the company a contribution as determined by the company. In other words, clause 24 (2) provides for a deficit reduction levy on coal industry employers, if required. We are waiting to see whether the Government will apply such a levy to employers in the general workers compensation scheme to reduce the mounting deficit. The deficit reached $3 billion this month, and it is all the doing of this State Labor Government.

Clause 31 of the bill gives the new workers compensation company the power to require any coal industry employer to effect with or through that company all of the employer's workers compensation insurance coverage for its employees. It also makes this requirement mandatory for all coal industry employers. This provision covers what is dealt with in section 27 of the 1946 Act. The workers compensation provisions of this legislation have been agreed to by both the Minerals Council and the mining division of the Construction, Forestry, Mining and Energy Union [CFMEU]. The provisions continue the monopoly provisions that are currently provided by the Coal Industry Act 1946.

Richard Grellman, formerly of KPMG, is becoming well known for providing reports relating to reforms in regard to workers compensation. His 1997 report entitled "Inquiry into Workers Compensation in New South Wales" is regarded as a landmark in workers compensation policy. Honourable members will no doubt recall hearing his name mentioned during debate in this Chamber on the Government's Workers Compensation Legislation Further Amendment Bill. As recently as last month Mr Grellman also gave evidence to the General Purpose Standing Committee No. 1 inquiry into workers compensation.

The Hon. Duncan Gay: Did he bag them?

The Hon. MICHAEL GALLACHER: No, he did not bag them. He told the truth, unlike the State Labor Government in its continual mismanagement of the scheme. If one wants to call telling the truth by painting a grim picture of this Government's handling of the scheme bagging this Government, then it could be said that he bagged them. But he came to the committee with the intention of telling the truth, and he told the truth. I wish the Deputy Leader of the Opposition could have seen the looks on the faces of government officials as they heard the truth pour out under oath. Last year Mr Grellman undertook an independent review of workers compensation in relation to the coal industry. The review recommended that the fund for coalminers insurance should remain separate from WorkCover.

The Grellman report also recommended an independent review of coalminers insurance after 12 months of operation of the reforms to evaluate restructuring efforts that have been designed to realise the benefits of industry specialisation. Mr Grellman also recommended an additional independent review after two years of the workers compensation monopoly arrangements in the coal industry. The Government has indicated that it supports these reviews, and the Coalition also supports them. In fact, I note that this Government received a number of key recommendations from Mr Grellman in his report relating to the general workers compensation scheme in 1997. The fact that this Government reneged on some of Mr Grellman's recommendations, such as the private underwriting of the scheme, has contributed to the current problems with the general scheme.

I hope that the Government will honour its commitment to Mr Grellman's recommendations for one-yearly and two-yearly reviews respectively of the workers compensation scheme for the coal industry. These are very sensible recommendations, and the Coalition will hold the Government to its commitment. The New South Wales Minerals Council expressed its desire for workers compensation for the coalmining industry to be part of the reforms taking place in the general WorkCover scheme. That is my understanding at this stage. The Coalition has supported this approach. In fact, during debate in this House on the Workers Compensation Legislation Amendment Bill 2001 (No 2), the second tranche of the Government's legislative reforms of the general workers compensation system, I moved an amendment to apply the Government's workers compensation reforms to the coal industry.

Despite the fact that the Special Minister of State admitted in this Chamber that there are difficulties with the coalminers scheme, the Coalition received no support for its amendment, which would have applied the Government's reforms to the coal industry scheme. In support of maintaining a separate coal industry scheme, the Government continually refers to the very good contribution made by coalmining industry workers to the economy of the State and also recognises the dangerous nature of their work. Honourable members will recall, however, that last week the Coalition tried to recognise others who play a very important role in New South Wales by providing them with some level of surety or protection from the scheme because of the dangerous nature of their work.

The Hon. Duncan Gay: That was the police and firefighters.

The Hon. MICHAEL GALLACHER: That is exactly right. The Deputy Leader of the Opposition refers to the Government's handling of a very sensible amendment that was put forward by the Coalition during recent debate on workers compensation. The Coalition wished to exempt some emergency service workers from certain legislative reforms relating to psychological impairment. Those workers are confronted on a daily basis with crime scenes or accident scenes that very few members could even imagine. The Coalition was endeavouring to send a message to the individuals employed in emergency service work that we recognise the dangerous nature of their work and the contribution that their families make in supporting the men and women who, on a daily basis, go out to perform those tasks.

One need only look at the *Police Service Weekly* to see the frequency with which police officers are medically discharged from the Police Service, or make a couple of inquiries at a local police station to find out how many police officers have left the Police Service because of psychological difficulties. Ambulance officers, members of the Health and Research Employees Union [HREA], and members of the Fire Brigades Employees Union, which represents the metropolitan fire brigade and the Rural Fire Service, are also confronted with stressful sights of horror.

The Opposition tried to provide those individuals with a level of surety to protect them should they become psychologically affected. The Opposition sought to have them exempted from the provisions of the Government's legislation. The action which the Opposition sought to take in relation to those workers was fairly consistent with what the Government has done in relation to the coal industry. In the end the Government proved itself to be uncaring and unrelenting—it was not prepared to recognise the nature of the work performed by those individuals.

The Hon. Duncan Gay: That is probably why this Government received a record low vote in Tamworth.

The Hon. MICHAEL GALLACHER: That is exactly right. The Deputy Leader of the Opposition again draws my attention to the absolutely shocking results for the Australian Labor Party and the New South Wales Labor Government in Tamworth.

The Hon. Duncan Gay: Mr Acting-President, the Hon. Tony Kelly, is nodding his head.

The Hon. MICHAEL GALLACHER: Yes, in agreement! It is interesting that the Australian Labor Party preselected an ambulance officer to be its candidate in Tamworth and then left him at the high tide mark.

The Hon. Duncan Gay: They sold him out. He was hung out to dry.

The Hon. MICHAEL GALLACHER: He probably would not have got any votes from his work mates in Tamworth because of the Government's handling of the workers compensation issue. Ambulance

officers in Tamworth know exactly what is happening in New South Wales. They know the Government's position in relation to the Opposition's very supportive amendment, and that showed in the by-election results from many sectors in the Tamworth electorate. Those people were taken for granted by this Government.

The Hon. John Jobling: We will ensure that it continues to show.

The Hon. MICHAEL GALLACHER: As the Hon. John Jobling correctly interjects, the Coalition will continue to see that realisation develop over the next 12 months as we approach the next State election. I can assure honourable members that, even though this Government and certain members of the crossbench have walked away from emergency service workers, the New South Wales Coalition will continue to support the rights of those workers to security. If the Government is committed to ensuring that coalminers have a level of protection in relation to workers compensation reforms, it is only fair that the Government at least consider providing a similar opportunity for emergency service workers.

The Hon. RICHARD JONES [3.30 p.m.]: I support the Coal Industry Bill. Barry Davies, from my office, consulted with the Construction, Forestry, Mining and Energy Union [CFMEU] and the Minerals Council, both of which confirmed support for the new structure.

Ms LEE RHIANNON [3.30 p.m.]: The Coal Industry Bill dissolves the Joint Coal Board and the Mines Rescue Board and transfers their functions and staff to independent companies to be jointly owned by the CFMEU and the New South Wales Minerals Council. The Greens understand that that change was precipitated by a unilateral decision of the Federal Government to abandon the activities of the Joint Coal Board and the Mines Rescue Board. It appears that the Federal Government cares little for the safety and welfare of miners and no longer wishes to sully its hand with such mundane matters.

In line with the Howard Government's commitment to the wilful destruction of public activities and its obsessive adherence to the entirely false notion that private enterprise is always superior to public enterprise, it has already enacted legislation to end Federal Government involvement. The history of both the Joint Coal Board and the Mines Rescue Board illustrates the importance of government intervention to correct the failure of private enterprise to protect workers. It is small wonder that a Coalition Government would seek to wind up such bodies. I will return to the history of the Joint Coal Board later, because it is most relevant to our deliberations on this bill.

Before the advent of those two boards the coal industry was plagued by accidents and dust diseases and there was little regard to the safety, health, development or welfare of the workers and their families. Prior to the establishment of the Joint Coal Board more than one in seven coalminers suffered from the debilitating black lung disease. Coalmining communities were generally poor and their needs were incredibly neglected. Today the Joint Coal Board has virtually eliminated black lung disease—

The Hon. John Della Bosca: It has eliminated it.

Ms LEE RHIANNON: I thank the Minister for that correction, if that is the case; and I do believe him. The board has eliminated most other dust-related diseases. The board has improved mine safety and ensured that appropriate on-site facilities are provided for miners. The board provides a complete range of coalmine-specific services for miners and their families. It is a credit to the spirit of public service and the persistence of the mining union that such advances have been made. I return to the role of the mining union in achieving decent and necessary changes in conditions for the coal work force. However, while miners' conditions have improved, the future of coalmining is clouded by great uncertainty.

Greater mechanisation has reduced the number of jobs and greatly changed the nature of the jobs that still exist. Competition with overseas mines and the trend for falling coal prices has thrown the future of some mines into doubt and has caused others to close. The exhaustion of supplies near the surface is beginning to drive mines deeper underground, and that will eventually increase mechanisation and reduce the number of jobs available. In addition, growing awareness of the massive environmental impacts of coalmining and coal combustion will inevitably reduce or eliminate the industry in the long run. The imperative to curtail greenhouse gas emissions has been accepted by most governments and will inexorably result in reduced coal consumption.

During that process it is essential that miners and their families are not abandoned and that their needs are taken care of as they make the transition to employment in newer, sustainable industries. It is of great concern to the Greens that the Joint Coal Board, or a similar government instrumentality, will not be there to

protect the welfare of miners during that inevitably difficult period. In 1947 the Commonwealth and New South Wales governments established the Joint Coal Board and gave it wide powers to control, direct and assist the coal industry. The board played a very important role in promoting modernisation in the industry. In the latter days of its existence it did a great deal for the health and safety of workers in the industry.

To repeat some of the achievements of the Joint Coal Board, as the Minister said, the board eliminated dust-related diseases. It took the New South Wales coal industry out of the legal business of the Commonwealth and State arbitration system, which allowed disputes to be dealt with much more swiftly. It established the Coal Industry Tribunal, which had the powers of both the Commonwealth and State arbitration courts. It established local coal authorities to deal with industry disputes—a welcome innovation to the workers on the coalfields to the north, south and west of Sydney because it allowed disputes to be settled much more quickly. Prior to the establishment of the Joint Coal Board no bank or building society would finance loans for miners.

Many members of this place are unaware of how incredibly hard life was for miners in the 1940s and 1950s. It was a back-breaking industry but it was also very hard to hold together the miners' families and loved ones in areas that were underserviced. It was very difficult for miners to obtain a loan to build a home. As a result, the Joint Coal Board set up the Miners Co-operative Building Society to extend credit for home building on conditions that at that time were equalled only by the ex-servicemen's scheme. The co-operative helped miners achieve decent accommodation. Prior to the establishment of the Miners' Federation—the name of the union prior to its being called the CFMEU Mining Division—the miners worked very hard for the establishment of the Joint Coal Board.

The board did not really achieve much in its early years just after the Second World War, a period in which there were massive efforts by various sections of the work force to assist the war effort. The coalminers were absolutely crucial to that war effort. They were promised decent wages and conditions. After the war those promises were not delivered. By 1949 the attempt to regulate the industry by means of the Joint Coal Board and the Coal Industry Tribunal showed little improvement in production or in the working lives of miners. It certainly took the Joint Coal Board a while to get going, which was a historic tragedy for Australia. From 1947 to 1949 there was increasing concern and anger by miners and their families because the promises of decent conditions were not honoured.

In 1949 there was a seven-week coal strike. That was an extraordinary period for the history of this country, and it shaped much of the history of this State. When I reflect on the viciousness that I have observed in debates in this place, particularly about my political background, I often think that it is resonant of the divisions during that period which affected working people and their union. That strike had an extraordinary impact on the Labor Party, and it is still felt today, as is the push by conservative forces in this country. I ask members to think of the demands put forward by the unions, and how reasonable they were. Many people take working conditions for granted. In 1949 the workers were asking for six months long service leave after 20 years service—that was a crucial element of the campaign. Miners in Victoria—around Wonthaggi, where there was a big black coal mine—had already won that condition. But in New South Wales coalmine owners refused point blank to grant their workers long service leave.

Miners made a range of demands relating to long service leave, working conditions, and occupational health and safety issues. Those demands became the essence of the strike, because the Joint Coal Board was simply not doing its job properly during that period. People who wonder why that extremely bitter dispute arose and why miners were willing to strike for so long should remember the conditions under which they worked and the real dangers they faced at that time. An article by Ralph Gibson entitled "The 1949 Mining Strike" states:

> H. Wells, when he was Miners' Federation leader, wrote that in the one year 1943 over 100 miners on the South Coast alone were classed as totally incapacitated through dust on the lung. The accident rate was high—it reached 50% of the workforce each year in Wonthaggi. And there was also the threat of major cave-ins or explosions. These cost the lives of 21 miners at Bellbird pit near Cessnock in 1923 and 13 at Wonthaggi in 1947. In the last quarter of 1949 a total of 13 had died in fatal accidents at different NSW pits.

Coal owners were extremely angry about the lack of action by the Joint Coal Board, and the miners felt they had no option but to go on strike. They voted 10 to one in favour of taking strike action. Earlier I referred to the viciousness that unfolded in politics on the Labor front. Today that viciousness plays out, to some extent, in terms of the divisions that have occurred. Within about 48 hours of that strike being called in 1949 the Chifley Labor Government gave notice of a National Coal Emergency Bill. That bill put in place some of the most draconian measures—measures that today's Howard Government would be very proud of.

I place on record that only one member, the Labor Independent, Doris Blackburn, voted against that terrible piece of Labor legislation. To her credit, she was a lone voice against that legislation. While the upper echelons of Labor pushed the legislation hard, and it is true that it was Chifley who put the army into the coalfields, a number of Labor branches, as well as a number of individual Labor Party members, were very much against what they saw their party doing, and they supported the miners throughout the dispute.

The Hon. John Della Bosca: My grandfather was the president of the Littleton branch of the ALP.

Ms LEE RHIANNON: What did he do in this period?

The Hon. John Della Bosca: What do you think? It was a mining town.

Ms LEE RHIANNON: Did he take a stand with the miners or did he take a stand with Chifley?

The Hon. John Della Bosca: I will wait to give my reply.

Ms LEE RHIANNON: I look forward to that, because it is certainly a large part of our history that resonates today. The National Coal Emergency Bill penalised unions and individuals who donated money to assist workers and their families during the strike. There were huge fines. The Miners Federation and the Waterside Workers Federation, the forerunner of the Miners Union of Australia, were each fined £2,000—which was a huge amount in those days, the Federated Ironworkers Association was fined £1,000, and a number of union officials were gaoled. There was a constant call that it was a "red plot", that the whole issue was about communists trying to take over the industry and bring revolution to the country. That is why earlier I read out the list of miners' demands and their working conditions at that time.

This was no red plot. With great sincerity, people who were simply working under appalling conditions were fighting for what they had been promised during the Second World War. After years of those promises not being honoured, they felt compelled to take action. I was not alive during that period, but I have certainly heard that it was a fractious time in Labor politics in this country. The miners' strike lasted seven weeks, and gradually during that time public opinion turned against many of the miners and their supporters. I am sure mistakes were made by the union. I understand that the union made an assessment that it could have acted differently with regard to some issues, but it certainly believes that it was correct in leading the mineworkers into a struggle for better conditions.

Again I emphasise that I am speaking to the legislation because it was unfortunate that the Joint Coal Board in its early years of existence was not able to carry out its work effectively. There is considerable analysis that the board was, to some extent, nobbled. During that period—and it must be remembered that it was in the early years of the Cold War—there was a real push by the coal owners and the conservative parties to discredit Labor. Menzies was also a player. Together they were able to win Labor over to bring in the legislation. One could say that in many ways it was the early days of wedge politics, because it was the start of Labor going into the wilderness for those unfortunate 23 years.

At that time the *Sydney Morning Herald* quite frankly assessed that Chifley had "dug the grave of Labor" by raising the "red bogey" in the miners strike. While Prime Minister Chifley did great things for Australia and we have many reasons to be proud of him, he made many unfortunate decisions, and this was certainly one of them. At that time the Labor Government did not serve the interests of the majority of working people. Not long after the introduction of the National Coal Emergency Bill Labor found itself out of power, and we then went into a long period when there was a great deal of destruction and very little achieved in Australia.

With regard to the present legislation, it is hoped that the new corporations will be able to successfully fulfil their role as did the Joint Coal Board. While I raised criticisms about the early years of the Joint Coal Board, the board made important achievements over the years. The Greens are pleased that the employment entitlements of employees of the Joint Coal Board and the Mines Rescue Board are being protected. We also welcome ministerial oversight of the new companies, although we express our reservations that that oversight could be inadequate to the tasks ahead. While the number of workers in the mining industry has greatly diminished, it is an incredibly dangerous industry. Indeed, that is the real reason why the special bodies were set up over the years, after being fought for by workers under the leadership of their union.

We realise that those bodies are now being terminated because of what the Federal Government has done, but it is a matter of concern for the Greens. We hope that the Minister will ensure that the operations of

these companies are subject to ongoing reviews so that coalminers and their communities are not left to the whim of employers and the marketplace. Whilst the Greens believe that the coal industry is an industry of the twentieth century, many human beings remain dependent on the industry. During the wind-up phase we have a responsibility to show humanity and ensure that conditions do not revert to what they were in the early part of last century, when miners were forced to fight so hard for decent conditions and wages.

Reverend the Hon. FRED NILE [3.49 p.m.]: The Christian Democratic Party supports the Coal Industry Bill, which provides for the dissolution of the Joint Coal Board and the Mines Rescue Board, and for the functions of those dissolved boards to be exercised by companies registered under the Commonwealth's Corporations Act 2001 and approved by the Minister. It will establish a Mines Rescue Brigade, repeal the Mines Rescue Act 1994 to amend the Coal Industry Act 1946, and make consequential amendments to other Acts.

The State Government has been forced to introduce this bill because of the decision of the Commonwealth Government to withdraw from the Federal Coal Industry Act 1946 and the New South Wales Coal Industry Act 1946 on the basis that the Commonwealth considers it has no role to play in the oversight and administration of the New South Wales coal industry. The Commonwealth Coal Industry Repeal Act 2000 repeals its counterpart Act and transfers the assets, rights and liabilities of the Joint Coal Board established under the Act to a body to be formed under the law of this State. The proclamation of the commencement of the Federal Act awaits the passage of the appropriate New South Wales bill, which the House is now debating.

Therefore, the Commonwealth's decision to be no longer involved means that there can no longer be a Joint Coal Board. The New South Wales Government has taken this opportunity to rationalise coal industry operations in this State. The bill will also generally effect a reform plan that is supported by the industry parties—the Construction, Forestry Mining and Energy Union [CMFEU] and the New South Wales Minerals Council Ltd, which represents the employers or owners of the mines—for the transfer of the functions of the Joint Coal Board and the Mines Rescue Board to new industry-owned corporations or companies. These private companies will still be subject to strict government scrutiny.

There is often division between employers and unions and it is pleasing that this bill is based on co-operation between the CMFEU and the New South Wales Minerals Council Ltd. They should be congratulated on their spirit of co-operation and agreement. During the inquiry into occupational health and safety conducted by the Standing Committee on Law and Justice, members of the committee visited factories owned by BHP and other companies in the Hunter Valley and Newcastle area. We also inspected open-cut and traditional coalmines. As well, we inspected a longwall mine, in which 12 inches of an entire tunnel wall is excavated using a huge machine. The material falls down onto conveyor belts and is carried to the surface. The entire mine was filled with coaldust and the faces of the three miners working in the area were black and covered with coal dust. Obviously, they are also breathing in that coaldust and I can only imagine that, in due course, this will adversely affect their health. I am pleased that clause 10 (1) (a) of the bill states:

> (1) An approved company must exercise such of the following functions as are approved in its notice of approval:
>
> (a) providing occupational health and rehabilitation services for workers engaged in the coal industry, including providing preventive medical services, monitoring workers' health and investigating related health matters

It will also have other duties in relation to collecting information and so on. The health and safety of miners should be a priority and it is obvious that they will be under this legislation. Miners have a separate workers compensation scheme to other workers in this State and although I see no reason to change that, I wonder whether emergency service workers should also be in a special category because they, too, put their lives at risk. Perhaps that area should be further examined. It may have a detrimental effect on WorkCover if it is broken up into segments, but emergency service workers have expressed concern as to whether their entitlements are sufficient.

In addition, an approved company may provide courses in the production and utilisation of coal under international development assistance programs or undertake or take part in any other activities of benefit to the coal industry in New South Wales. For the purpose of exercising its functions, an approved company may also undertake or arrange for research, inquiries, investigations, surveys, tests and inspections. Clause 24 states:

> (1) All premiums and other money received by the workers compensation company under any workers compensation insurance scheme as established, administered or provided by that company, and any other money received by the company for the purposes of the scheme (including, but not limited to, money received under subsection (2)), must be applied:

(a) to pay any sum required to be paid by the company under any workers compensation scheme as established, administered or provided by it, and

(b) to pay any expenses incurred in the management and administration of any such scheme, and

(c) to pay for the provision of occupational health and rehabilitation services, and

(d) for such other purposes related to the coal industry …

The Opposition has referred to the deficit in WorkCover and I note that clause 24 (2) states:

> If the workers compensation company is satisfied (from the results of an actuarial investigation or from other information) that there is an overall deficit in the funds to be applied for the purposes specified in subsection (1), the workers compensation company may, by notice in writing to each employer in the coal industry in the State, require the employer to pay to the company a contribution of such amount as the company may determine and specify in the notice.

That answers the question often raised as to who owns the deficit. It is clear in this industry that the employers will own the deficit. Clause 31 (1) states:

> The workers compensation company has the power to require any employer in the coal industry in the State to effect with or through that company all workers compensation insurance in respect of the employer's employees in the industry.

This will become self-insurance through the employers. We may be able to learn some lessons from the operation of the workers compensation scheme in the mining industry and apply them to WorkCover generally in this State. The Christian Democratic Party supports the bill and looks forward to its operation in this State for the benefit of all miners, mine owners and employers.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [3.59 p.m.], in reply: I thank honourable members for their contributions to the debate. I wanted to respond in some detail to Ms Lee Rhiannon, but as time is limited it is more important that I thank a number of people who were involved in the long and arduous negotiations. It is not wise to name people but I want to particularly name Mr Ian Farrar, the Secretary of the Joint Coal Board, and a former member of my staff, Ms Vicki Mullen, who worked very hard on this legislation.

The Hon. Michael Egan: I had a lot to do with this matter before you were even a Minister.

The Hon. JOHN DELLA BOSCA: Did you?

The Hon. Michael Egan: Absolutely.

The Hon. JOHN DELLA BOSCA: I thank the Leader of the Government for all his work.

The Hon. Michael Egan: We would not have been at this point.

The Hon. JOHN DELLA BOSCA: The contributions of Mr Ron Land and Mr Tony Maher from the Miner's Federation have been alluded to at great length. They have done a great job representing the interest of the mining union throughout these discussions and they have allowed us to make incredible progress with this significant legislation. As the Deputy Leader of the Opposition said, Mr John Tucker, and his predecessor, Mr Denis Porter, as well as a number of other coalmining operators, were heavily involved in the negotiations. To answer Ms Lee Rhiannon, there are two important reasons why the coal scheme was not dealt with as part of the overall WorkCover reforms. First, the negotiations on this package were already well down the track and this legislation is a more important and greater advance in the overall coal industry culture than could have been achieved by attempting to force the mining industry into the general WorkCover scheme.

As other speakers have alluded to, the coal industry has for a very long time had its own workers compensation culture. The second reason—it would come as a surprise to some people—is that recent trends, based on co-operation between coal industry proprietors and the coal union, have actually produced very good trends in a number of key workers compensation areas, such as injury management statistics, the level and the rate of return to work, and the cost of rehabilitation. They all underline the fact that in many respects the co-operative relationship between the coal industry, the employers and the coal union has managed to secure benefits for the coal industry as well as for industry in general. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

Pursuant to sessional orders business interrupted.

DISTINGUISHED VISITORS

The ACTING-PRESIDENT: I acknowledge the presence in the gallery of Mr Dai, leading a delegation from the National People's Congress from Henan, China.

QUESTIONS WITHOUT NOTICE

TAMWORTH BY-ELECTION

The Hon. DUNCAN GAY: My question without notice is to the Treasurer. Despite the launch of Country Labor by the Hon. Tony Kelly, did the Australian Labor Party not run its Tamworth candidate under the Country Labor banner because its own internal poll showed that the brand "Country Labor" would result in an even worse result than the bad one achieved on Saturday by the Labor Party? Is that why the Labor Party how-to-vote cards for the by-election were then pulped? Is it also why the word "Country" was covered up on all corflute posters at polling booths? Does that mean that the Country Labor brand will no longer be used by the Labor Party? Does that truly mean the death of Country Labor?

The Hon. MICHAEL EGAN: I assure the Deputy Leader of the Opposition that I have no doubt that after the next election the Australian Labor Party will be the biggest party in the Legislative Assembly and the second biggest will be Country Labor. It was a pity that last Saturday a Country Labor candidate did not run for Tamworth because a Country Labor candidate would have won the seat. As it was, the Australian Labor Party candidate in Tamworth last Saturday increased the Labor Party's primary vote by some 4 per cent—a very significant increase.

By comparison, the National Party, which prior to the Tony Windsor era used to get 70 per cent of the vote in Tamworth—in fact, in the 1998 election it got 69.69 per cent—saw its vote fall to 36.56 per cent. One might wonder how one got elected with 36.56 per cent of the vote but what happened was that, I am told, at almost the dying moments of the campaign the National Party did what can only be described as a grubby preference deal with a candidate named Mr Warren Woodley.

The last time I remember Warren Woodley was in approximately 1994 when he shared a platform with the League of Rights. It might not surprise us that the National Party is in cahoots with the League of Rights but what does surprise me is—it is no wonder the Hon. Dr Arthur Chesterfield-Evans is not here because he must be ashamed—that in Tamworth last Saturday the GST-Democrats also allocated their preference to this League of Rights cohort ahead the Labor Party. It was absolutely disgraceful to see not only the National Party but also the League of Rights.

The Hon. DUNCAN GAY: I ask a supplementary question. Who won the election?

YOUTH ACCESS TO PUBLIC SPACE

The Hon. JANELLE SAFFIN: My question is directed to the Minister for Juvenile Justice, and Minister Assisting the Premier on Youth. Will the Minister inform the House of government initiatives in relation to young people and their use of public space?

The Hon. CARMEL TEBBUTT: The question of the Hon. Janelle Saffin is timely, as the holiday period approaches. It is a time when young people are often more visible and are certainly looking for recreational opportunities. The Government recognises that public space should be available for everyone to enjoy, but there are some sections of the community—to a large extent young people and older people—who use public space more regularly than others. The Government also recognises the specific role that public space plays in the lives of young people, primarily as a setting where they can meet and hang out with friends under shelter and at little or no cost. The Youth Action and Policy Association [YAPA] describes the importance of public space, particularly shopping centres, to young people as follows:

> A number of issues arise relating to the way shopping centres and young people interact. Shopping centres are commercial enterprises and while they provide many of the functions usually associated with public space they are privately owned.
>
> Balancing young people's and the centre's rights and responsibilities can be complex.

The New South Wales Government seeks to foster that balance in the interests of both young people and the broader community. I am pleased to advise the House that the New South Wales Government is funding YAPA

to pursue a public space project through the Western Sydney Area Assistance Scheme. The YAPA public space project is undertaking work in 11 local government areas in Western Sydney: Auburn, Bankstown, Baulkham Hills, Blacktown, Blue Mountains, Fairfield, Hawkesbury, Holroyd, Liverpool, Parramatta and Penrith. The aims of the public space project are to facilitate a change in the way that stakeholders deal with young people's use of public space in Sydney, and to increase young people's participation in the planning of public space areas in order to reduce the level of conflict between young people, stakeholders and other users of public space.

The project has investigated issues relating to security guards and young people in shopping centres, and the fact sheet "Whose Security" looks at a number of those issues. Managers have the power to stop people entering centres, which are privately owned spaces, by issuing bans. The subject of banning notices in New South Wales is explored in the fact sheet "You're banned!" Young people have raised this issue with me many times. It is a matter of concern and of trying to balance the needs of shopping centre retail outlet owners with the right of young people to use that public space.

YAPA has also held workshops for youth services on including the needs of young people in public space through urban design and development. An evaluation of shopping centre-based public space projects that aim to include young people is currently being conducted. These actions complement other initiatives, such as the "Urban Design Guidelines with Young People in Mind", which was launched at Westfield Shoppingtown, Blacktown. These guidelines stem from a report commissioned by the Government and produced by the Youth Action and Policy Association. Earlier this year the Western Sydney Regional Organisation of Councils held the "Whose Place? Public Space for Young and Old in Western Sydney" conference. The Government helped with sponsorship and in-kind assistance to the conference organisers.

Local government also has a key role to play in managing public space, and the New South Wales Department of Local Government has worked to develop indicators to assess the success of its social plans. Young people constitute one of its seven target groups. This sector is critical to the development of more youth-friendly spaces. I am currently overseeing the development of the Government's youth policy, and public space is high on our agenda. The way young people perceive and use public space will be an ongoing issue, and I look forward to updating the House about future developments.

SENTENCING PRACTICES

The Hon. MALCOLM JONES: My question is directed to the Treasurer, representing the Attorney General. Is it true that a person can be sent to prison for one year for cutting down trees whereas the average prison sentence for violent gang-rape is merely 2.9 years?

The Hon. MICHAEL EGAN: I thank the Hon. Malcolm Jones for his question, which I will refer to my colleague the Attorney General. However, I am sure the honourable member knows that it is not in order to ask Ministers to give a legal opinion or to provide information that is on the public record. That question seeks either a legal opinion or information that is on the public record. I suggest that the scenario he outlined is most unlikely—I am certainly not aware of anyone who has served 12 months gaol for cutting down trees.

The Hon. Eddie Obeid: In Queensland.

The Hon. MICHAEL EGAN: Queensland is a funny place. There are funny people there.

The Hon. Dr Brian Pezzutti: With a funny Labor Government.

The Hon. MICHAEL EGAN: I will not defend any Queensland politician. There are funny people in Queensland—they are all Queenslanders. They are also spongers: they have been sponging off the taxpayers of this State for as long as we have been alive. They filch hundreds of millions of dollars each year from New South Wales taxpayers so that they can keep their taxes low and bribe industries to establish in Queensland.

The Hon. Duncan Gay: What about full retail contestability?

The Hon. MICHAEL EGAN: They are very slow in Queensland. I am confident that full retail contestability will benefit New South Wales households when it comes into operation early next year. Queenslanders will not benefit from it for quite some time. I make no apologies for my Queensland Labor Party cousins. The Hon. Patricia Forsythe made a very interesting adjournment speech the other night about dangerous trees planted by councils.

The Hon. Dr Brian Pezzutti: You read it.

The Hon. MICHAEL EGAN: I was here; I heard it. It was a very intelligent speech. As I listened to it, I thought, "That's the sort of intelligent speech the Hon. Dr Brian Pezzutti could make if he put his mind to it." But we have not yet heard anything from him of that quality. However, next year is a new year and, who knows, we might see a significant improvement in the Hon. Dr Brian Pezzutti's performances. I will take the Hon. Malcolm Jones' question on notice, refer it to the Attorney General, and supply a detailed response as soon as I can.

NEW SOUTH WALES POLICE COLLEGE EXAMINATIONS

The Hon. MICHAEL GALLACHER: My question is directed to the Minister for Police. Is it true that a large number of police academy students who are due to be sworn in on 21 December this year are being retested today for courses that they have not yet passed? How many students are being retested and in what areas are they being retested? How could the Minister state in this House on 27 November that 400 officers will come out of the academy this month when so many have not yet passed their courses? Have pass marks for these students been lowered in order to do whatever it takes to get them through?

The Hon. Dr Brian Pezzutti: He's got a House folder.

The Hon. MICHAEL COSTA: No, I do not have a House folder for this question. Once again Opposition members have decided to attack our fine young men and women who are currently studying diligently to pass their Police Service examinations and enter the best police force in the country. It is an absolute disgrace that the Opposition has taken that approach once again. That surprises me because, as I have said before, I cannot take the Opposition seriously until it starts to release some policies. Those opposite do not have any policies—and it is not just me who is saying that. John Howard has said it too. Paying a compliment to the Carr Government, Mr Howard said that the people of New South Wales were getting tired of the State administration but that those opposite should not imagine it will be a "pushover" to replace them. It will not.

The Hon. Michael Egan: Who said that?

The Hon. MICHAEL COSTA: John Howard. Speaking of this Government, he also said:

> It understands the need for responsive politics.

He continued:

> … it knows it's in difficulty—

I do not agree with that—

> and that's why its changing a lot of personnel and changing a lot of attitudes and a lot of policies.

The Hon. Rick Colless: Point of order: That quote has absolutely no relevance to the subject of the question. Will the Minister please answer the question?

The ACTING-PRESIDENT: Order! There is no point of order.

The Hon. Michael Egan: No policies and no points of order.

The Hon. MICHAEL COSTA: No. John Howard said that those opposite need 15 good candidates. What an admission of hopelessness on that side of politics! What an admission that those opposite are absolutely hopeless! On Saturday the Opposition won back a seat that it should never have lost in the first place. Opposition members are hopeless. Their own Prime Minister said they need talent and commitment. What does that say about that lot opposite? They have no policies. They are interested only in attacking fine young men and women who are in the process of entering the Police Service.

The Prime Minister got it right. He said that Opposition members should have policies and that those policies should be responsive. I would be happy if Opposition members had any policies. However, if those policies were responsive, it would be a great achievement for Opposition members. In reality, the Opposition has no policies at all. Opposition members, who are politically bankrupt, are interested only in criticising these fine young men and women in the Police Service. I would like to know whether there are 15 talented people in the ranks of the Coalition. Are Government members able to think of 15 talented people in the Coalition?

The Hon. John Della Bosca: Malcolm Turnbull is one.

The Hon. MICHAEL COSTA: Can honourable members think of anyone else?

The Hon. Michael Egan: I would support Turnbull for a safe Liberal seat.

The Hon. MICHAEL COSTA: The Prime Minister not only wants 15 good candidates; he says that they must be first-class candidates. What does that make honourable members opposite?

The Hon. MICHAEL GALLACHER: I ask a supplementary question. Why will the Minister not answer my question? Can he not answer the question?

The Hon. MICHAEL COSTA: I thank the Leader of the Opposition for asking a supplementary question as I had not finished referring to the hopelessness of Opposition members.

The Hon. Duncan Gay: Everyone is listening to you. You are stuffing up.

The Hon. MICHAEL COSTA: No, I am not. When the Prime Minister makes points such as those to which I referred earlier about Opposition members, they resort to attacking fine young men and women who are currently studying to enter the Police Service. Opposition members should be encouraging rather than attacking those young men and women. The Prime Minister is right. There are not 15 first-class candidates in the Liberal Party.

CHINA WORLD TRADE ORGANISATION MEMBERSHIP

The Hon. HENRY TSANG: What is the response of the Minister for State Development to China's entry into and its admission as a full member of the World Trade Organisation [WTO]? Is it good news for regional New South Wales?

The Hon. MICHAEL EGAN: The Hon. Henry Tsang has asked an important question. I am somewhat surprised that he asked me that question as he is more of an expert on this matter than I am. This morning at 5.30 I heard the Hon. Henry Tsang on radio 2UE and I understand that he was also on ABC radio in Tamworth. At midnight China became a full member of the World Trade Organisation. This is a huge opportunity for New South Wales exporters—in particular, for cotton, dairy, beef, wheat and wine producers. It is the biggest development in international trade in a generation. I agree with the Hon. Henry Tsang, who said that New South Wales exporters must seize this opportunity. China is the world's second largest economy, with its 1.3 billion people.

This is a great time for Australian business to get in first. The low Australian dollar makes us more competitive than the North Americans and the Europeans. We should be exporting as much as possible to China. China has been admitted to the WTO after 15 years of negotiation. The latest round was held in Doha, in the Middle East. As a result of the WTO agreement, China must now slash dozens of punitive tariffs. Tariffs on wine imports must be cut from 65 per cent to 14 per cent. That, of course, will be good news for Riverina and Hunter wine producers. I also understand that, later this month, the Premier and the Hon. Henry Tsang will oversee the first shipment of Monarch wines from the Hunter to China. Monarch wines was a winner in the Hunter Export Awards for its efforts in penetrating the Asian market.

Under other WTO rules China must open up its cotton market. It is now bound to permit at least 3.5 million imported bales of cotton. That is also great news for New South Wales cotton growers as I am informed that Chinese mills prefer the Australian and American varieties to their own cotton. Trade with China is growing significantly. China is already New South Wales' third largest trading partner, with bilateral trade worth $5.3 billion a year. That is a 30 per cent increase on figures for the previous year. As I said earlier, exports to China are growing strongly. New South Wales has a proud record of exports to China.

New South Wales already exports wool, sugar, wheat, cotton, canola oil, beef, butter, cheese and wine to China. That includes 242,000 tonnes of wool, 65,000 tonnes of wool tops, 1.6 million tonnes of sugar—admittedly, most of that comes from Queensland, but we have a proud sugar production sector on the State's North Coast—7.3 million tonnes of wheat, 2.6 million tonnes of rice and 743,000 tonnes of cotton. I congratulate China on its entry into the WTO—a fabulous milestone. I also commend the Hon. Henry Tsang for the good work he is doing as the special adviser of the Premier and the New South Wales Government on east Asian business.

LAKE COWAL GOLDMINING

The Hon. RICHARD JONES: My question without notice is directed to the Minister for Mineral Resources: Is the American mining company Homestake breaching native title processes by illegally conducting exploration on sacred land of the Wiradjuri people at Lake Cowal? Has that company flagrantly broken the law by failing to publish a notice in accordance with section 29 of the Native Title Act? Will the Minister remind that company of its obligations under Australian law and ensure that this illegal exploration on leasehold land stops until such time as the company obeys the law?

The Hon. EDDIE OBEID: The Lake Cowal gold project is located 45 kilometres north of West Wyalong. In February 1999 the then Minister for Urban Affairs and Planning granted development consent for the proposal. On 30 May this year Homestake mining announced that it had reached agreement with Norths Gold Western Australia Ltd to purchase a 100 per cent interest in the Cowal gold project. I am advised that Homestake has commenced a detailed geological evaluation of the resource, including a drilling program. I am further advised that drilling activity is restricted to land over which native title has been extinguished. I understand that this land is held under perpetual lease. Under Commonwealth native title legislation the granting of a perpetual lease may extinguish native title. I am advised that, under the Commonwealth Native Title Act, native title is extinguished over the land in question at Lake Cowal.

As required by native title legislation, the company recently advertised its intention to explore in other areas where native title may not have been extinguished. I am advised that no native title claims were received within the specified notification period. The provisions in the Commonwealth Native Title Act must now be addressed before a mining lease can be granted. I am further advised that, in compliance with this Act, relevant notices were issued and published earlier last month. Individuals or groups have three months—from 29 November 2001—to take steps to become native title parties for the relevant areas of the proposed mining lease. I have met the managers and chief executive of Homestake mining. I believe that this responsible company is doing what it is entitled to do within the laws of this State. It is the intention of that company to expand the Cowal gold project and to conduct further exploration.

The Hon. Duncan Gay: I do not think they intend to expand it.

The Hon. EDDIE OBEID: They want to expand an already viable project. I wish them well. I do not believe we should be denouncing or discouraging any mining organisation from investing good money in our regions and creating jobs. I assure the House that the Government is very stringent with respect to planning approvals and conditions, and it will ensure that they are complied with. However, we should let Homestake continue under its approval and, hopefully, establish a viable project. That in turn will create many jobs. While I thank the honourable member for his question, I do not believe that we should be too alarmed by any of the major mining organisations working in this State. They are working within the planning authorities and their approvals.

ERSKINEVILLE PUBLIC SCHOOL CLOSURE

The Hon. PATRICIA FORSYTHE: My question without notice is to the Minister for Police, representing the Minister for Education and Training. Has the Minister received correspondence from Erskineville Public School that shows a majority of parents from the school have indicated that they will not send their children to the amalgamated school at Alexandria Park, and instead will enrol their children at non-government schools? In view of this, how can the closure of schools such as Erskineville Public School be good for public education in New South Wales? Will the Minister review the case put forward by the Erskineville school community for remaining open?

The Hon. MICHAEL COSTA: I am not aware of the details raised in the honourable member's question. I will obtain a reply from the Minister for Education and Training.

COBAR MINERAL DEPOSITS

The Hon. PETER PRIMROSE: My question is to the Minister for Mineral Resources. What has been done to take advantage of the potential of mineral deposits found in the Cobar area?

The Hon. EDDIE OBEID: As I have previously advised the House, the New South Wales Government is spending $30 million to encourage investment and exploration in our State. The Government's

Exploration New South Wales program actively encourages growth of our regional minerals industry. I am pleased to advise the House that recent mineral surveys in the Cobar area have produced some exciting results. The program highlights the value of this Government's support for the minerals industry. The latest results add to the information gained from shallow drilling, geochemical investigations and soil landscape mapping studies in a vast area between Cobar and Nymagee.

The latest results have found rock similar to that containing important Cobar mineral deposits, which are the source of material for the Elura, the Peak and the CSA mines. What is exciting about these latest findings is that copper, zinc and gold may be more widely distributed in this area than previously thought. Our findings indicate that these minerals may be present in rocks extending north and south of Cobar. Indeed, I am advised that the flat landscape of western New South Wales may conceal many new mineral opportunities. Using the latest Australian technology we are helping to unlock this State's mineral resources. This year $200,000 has been allocated from our Exploration New South Wales program to investigate the Cobar region.

More than $1.6 million will be spent exploring this area during the next six years. The current focus is on an area east of Cobar, where there has been little exploration due to soil coverage. The relatively new technique of geochemical surveys will be used in this area. Last month samples of bedrock were collected to identify more prospective areas. These will be analysed in a joint project with the Co-operative Research Centre [CRC] for Landscape, Environment and Mineral Exploration. The New South Wales Government is contributing $3.5 million for research by the CRC. Unlocking the secrets of our mineral resources is vitally important to New South Wales. This is good news for families living in this important area because development and exploration create jobs in country New South Wales.

BLOOMFIELD HOSPITAL PATIENT ASSAULT

The Hon. ELAINE NILE: I direct my question without notice to the Treasurer, representing the Minister for Health. Is it a fact that on 22 November at Bloomfield Hospital, Orange, three male patients sexually intimidated a female patient by forcing her to perform oral sex on them? The young woman was, and still is, traumatised by this event. Is it a fact that she was locked in a cell with the three males where these acts took place? Is it a fact that there was no supervision of patients at the time the incident occurred? Does this type of neglect represent a breach of duty of care by the employees of the Department of Health? Will the Minister urgently investigate this shocking sexual assault and ensure that it is not repeated in any other psychiatric hospital in New South Wales?

The Hon. MICHAEL EGAN: I am not aware of the incident to which the Hon. Elaine Nile referred. I will refer it to my colleague the Minister for Health and obtain a response as soon as possible.

LIVERPOOL RANGE RAIL TUNNEL

The Hon. JENNIFER GARDINER: My question is to the Minister for Mineral Resources, representing the Minister for Transport. Does the Minister recall that in its report on future employment and business opportunities in the Hunter region the Standing Committee on State Development—of which the Minister for Mineral Resources and the Acting President were members—examined proposals to build a new railway tunnel through the Liverpool Range, with a view to opening up the Gunnedah coalfields and allowing more cotton and grain freight from the north-west of the State to the port of Newcastle? Does the Minister recall that the standing committee unanimously reported that such a tunnel could improve the competitiveness of New South Wales in international markets by providing improved transport infrastructure? With Country Labor's soul-searching under way after its poor showing in the recent Tamworth by-election, will the Carr Government now give this important project a high priority?

The Hon. EDDIE OBEID: I thank the Hon. Jennifer Gardiner for asking an intelligent question because a rail tunnel through the Liverpool Range is important. As a matter of fact, a syndicate with the Construction, Forestry, Mining and Energy Union [CFMEU] approached the Government at the time about that possibility. At present we have considerable resources on this side of the Liverpool Range.

The Hon. Duncan Gay: There's even more on the other side.

The Hon. EDDIE OBEID: Yes, no doubt. As we exhaust the coal reserves on this side of the Liverpool Range we will need to access our important reserves in the Gunnedah basin. There will be an opportune time for either the private sector and the Government or the private sector alone to channel that tunnel

through the Liverpool Range to access those resources on the other side. No doubt there are considerable resources on the other side of the range in the Gunnedah district. At present there are a number of mines. However, with the costs and freight charges involved it is not currently economically viable to establish such a tunnel. I am in favour of any development of our regions, but a cost factor is involved in transportation.

At present, with our northern coal strategy, many reserves on this side of the Liverpool Range need to be extracted. That process will be economically beneficial to the State and to the companies extracting those reserves. My message to Gunnedah is that the time will come when the focal point for this State will be to extract those reserves. We can only encourage companies to determine the viability of existing resources. I will be happy to see the prospects for a future tunnel when the time comes, but the private sector will decide when it is more appropriate to extract the important coal reserves with any related cost benefits. I hope that other resources will be found in the Gunnedah basin. I am more than happy to seek an addendum to this answer from my colleague the Minister for Transport because the question was directed to him. However, my portfolio of mineral resources believes that the time will come when major resource extractions are made from the Gunnedah district. It is more than likely that that tunnel will be needed.

The Hon. JENNIFER GARDINER: I ask a supplementary question. Will the Minister give an indication of the Government's timeline as to when such a tunnel might be built? Is it three years, five years, 10 years, 20 years? What does the Minister think is a reasonable timeline in which the Government might be able facilitate that tunnel and help private industry get the project up and running?

The Hon. EDDIE OBEID: I do not have a view on the timeline. That will be decided by the market.

The Hon. Duncan Gay: You are in no hurry?

The Hon. EDDIE OBEID: We do not determine the market; we are not an interfering government. We help companies to explore and we ensure that they can access those resources. Most important, it is up to the marketplace to determine the timing. As I said, I would like to see all the resources in the Gunnedah basin being extracted. I will raise the issue with my colleague the Minister for Transport and see what his view is as to the timeline.

DRINK SPIKING

The Hon. RON DYER: My question is addressed to the Minister for Police. Will the Minister advise the House of the latest public safety warning from police?

The Hon. MICHAEL COSTA: That intelligent question deserves a good answer.

The Hon. Duncan Gay: Read it carefully.

The Hon. MICHAEL COSTA: I will read it very carefully. During the Christmas season people will be attending Christmas parties and social functions. It is a sad but real fact of life that some people will use these occasions to prey on others, particularly young women. Over recent weeks police have had numerous reports of drink spiking in licensed premises. Today Commander Gary Dobson, police spokesperson on community safety issues, said that using drugs to spike drinks is more of a problem than most people think. Police have called on the community to not underestimate the risks of drink spiking. Legal and illegal drugs are commonly used, including extremely dangerous illicit substances. People should take care not to leave their drinks unattended. Police suggest that people not accept drinks from strangers, and warn party goers to keep an eye on their drinks at all times. Police are asking people to come forward if they suspect that such an incident has occurred, and remind the public that drink spiking is an offence. We urge everyone to take extra care of themselves and their friends, and to have a safe holiday season.

OFFICE OF THE PROTECTIVE COMMISSIONER OBJECTIVITY

Reverend the Hon. FRED NILE: I direct my question without notice to the Treasurer, representing the Attorney General. Is it a fact that page 52 of the New South Wales Parliament's Public Bodies Review Committee report of October 2001 describes the close relationship between the Office of the Protective Commissioner [OPC] and the Protective Division of the New South Wales Supreme Court? Is it a fact that OPC clients have made complaints regarding the adverse effect of this close relationship on the objectivity of their OPC complaint investigations? Is there a conflict of interest between the OPC and the Protective Division of the New South Wales Supreme Court? When will the Attorney General implement recommendations 16, 17 and 18 of the report?

The Hon. MICHAEL EGAN: I am not familiar with the issue or with the report of the Public Bodies Review Committee. However, I will refer the honourable member's question to my colleague the Attorney General and obtain a response.

ARMIDALE POLICE STATION STAFFING

The Hon. GREG PEARCE: My question is to the Minister for Police. What action is the Minister taking to ensure that the Armidale police station is properly resourced? Is the Minister aware of the accommodation, equipment and personnel limitations at Armidale police station and, in particular, the fact that only three officers are rostered on at night, making it impossible to provide an adequate night-time response?

The Hon. MICHAEL COSTA: I have received representations from the Hon. Richard Torbay in another place in relation to this matter.

The Hon. Duncan Gay: He is not honourable.

The Hon. MICHAEL COSTA: He ought to be an honourable at some point. He is an extreme gentleman, and very committed to his local community. I hope that one day he is an honourable. I have made arrangements to visit that area at the invitation of the honourable member for Northern Tablelands to discuss those matters first hand. I look forward to visiting the Armidale area. In the meantime, I shall quote John Howard. He said:

> We also need to spend time between now and the next State election articulating in detail what we stand for. You can't persuade people in the last six weeks of what your policies are.

The Prime Minister is asking the very same question that I have been asking: What do Liberal Party members stand for? They do not have any policies, they do not have any ideas, they are in trouble. In the meantime, they need to apologise to the National Party, because the Prime Minister's comments were directed at the Liberal Party. I await with anticipation the next National Party conference to see what its leaders say about the quality of its candidates.

REGIONAL BUSINESS INVESTMENT TOURS

The Hon. JOHN HATZISTERGOS: Will the Treasurer advise the House of any government initiatives designed to improve the access of regional businesses to much-needed investment capital?

The Hon. MICHAEL EGAN: The Government is committed to building bridges between regional communities seeking access to capital and the mainstream investment community. Among the most successful initiatives to help grow regional businesses has been a series of New South Wales Government-sponsored investment tours of regional New South Wales. The sixth and most recent investment tour saw a 16-member team of high-powered investors and investment advisers taking part in a three-day flying tour designed to showcase regional investment opportunities in Newcastle and the lower Hunter, and also in Queanbeyan and in Coffs Harbour. The investment team included representatives of the ANZ Bank, Blue Sky Equities Pty Ltd, First Pacific Capital Underwriters Pty Ltd, Managed Growth Australia Pty Ltd, the Bendigo Bank and the Stock Exchange of Newcastle.

This latest investment tour gave this important group of decision makers a chance to see at first hand the investment opportunities in regional New South Wales. The Newcastle tour included a visit to the Industry Development Centre and presentations from information communication technology companies such as Cytech, Nuline Profiles Ltd and Advanced Transport Systems Australia. The Queanbeyan leg of the tour involved visits to civil infrastructure company UEA Engineering and to Sustainable Technologies, a company specialising in solar energy development. Other presentations were received from Tinderry Mountain Dried Foods, DPM Consulting and Integrated Ecovillages. The tour to the Coffs coast, which was led by my colleague the Minister for Regional Development, involved a visit to the Coffs coast education campus, the technology park site and the innovation centre currently under construction.

The Government is determined to ensure that country businesses get a fair deal, and tours such as these will continue to play a vital role in getting New South Wales greater access to the mainstream investment community. While Harry Woods is working for country and regional New South Wales, all National members can think about is electoral advantage and how to win another seat in Parliament. All they want is more seats in Parliament; they do not want any success for country or regional New South Wales. Shame on them!

HEATH CAMERON BROWN DEATH IN CUSTODY

Ms LEE RHIANNON: I direct my question to the Minister for Juvenile Justice. Has the death of Heath Cameron Brown on 6 January this year while on leave from Reiby Juvenile Justice Centre been recognised as an Aboriginal death in custody? Why was Heath Brown placed in the therapeutic unit at Reiby Juvenile Justice Centre? Has Heath's family received a report on his death from the Department of Juvenile Justice? If not, why not? Has Juvenile Justice lost any files relating to Heath Brown? If so, what is the explanation for that?

The Hon. CARMEL TEBBUTT: The tragic death of the young man referred to by the honourable member occurred while he was participating in approved leave outside a juvenile justice facility. However, he was a juvenile in custody and therefore his death is regarded as a death in custody. Indeed, his death is recorded in last year's budget papers as a death in custody. As to the other matters raised, Ms Lee Rhiannon is aware that this death is subject to investigation by the police and the Coroner, and as such I am not in a position to discuss the issues raised by the honourable member. However, the department will co-operate in any way that is required by the Coroner.

Ms LEE RHIANNON: I ask a supplementary question. Will the Minister say in what way the family has been notified, because the family, which is distressed, requires an answer?

The Hon. CARMEL TEBBUTT: I am not aware of what specific contact the department has had with the family. I know that the Coroner has been in contact with the family. However, I am happy to follow up that issue and get back to Ms Lee Rhiannon with some information, as long as it does not in any way compromise the investigation currently being undertaken by the police and the Coroner.

MINISTER FOR POLICE ADVISERS APPOINTMENTS

The Hon. RICK COLLESS: My question is addressed to the Minister for Police. Are the appointment of Geoff Schuberg to the Minister's advisory council and the impending commencement of Tim Priest as an adviser in the Minister's office a clear indication that the Commissioner of Police, Peter Ryan, was wrong in his treatment of those officers? Following on from the Minister's reversal of the commissioner's plans to close police stations, are these appointments a further indication that the Minister has no confidence in the ability of the commissioner to carry out his duties, and that the Minister is deliberately undermining the commissioner at every turn?

The Hon. MICHAEL COSTA: Once again an Opposition bereft of policy seeks to play politics. I repeat the comment I have made on a number of occasions in this House: I have absolute confidence in the Commissioner.

The Hon. Duncan Gay: Total?

The Hon. MICHAEL COSTA: If the Deputy Leader of the Opposition looks in the dictionary he will see that "total" does not mean the same as "absolute". I have absolute, not total, confidence in the police commissioner. In relation to the advisory council, as I announced last week in this House, I take great pleasure and pride in the fact that I consult with the community and find out what the community wants in terms of policing. The advisory council I have put together will be a critical component of that consultation process, and I will be coming back to the House in the new year with some interesting policy positions—something that members opposite are not familiar with in relation to policing—as a consequence of the advisory council's activities. It is interesting that the Hon. Rick Colless raised the question in a way that does not go to the heart of what this Government has been about, that is, increasing front-line policing, looking at community consultation and ensuring that we have a Police Service that is responsive to community needs.

I am glad the honourable member asked about Tim Priest. I advise the House that currently I am finalising discussions with Tim Priest. Tim Priest has agreed to come on board on secondment to the ministry to look at drug education programs. Tim has a number of creative ideas in relation to drug education, and I have had the opportunity of looking at them. Tim will commence in the ministry in February. I am pleased that Tim took that decision because not only is he a capable detective; he has also shown some knowledge, interest and compassion in the area of drug education. As I have said before, Opposition members should focus on the comments of their esteemed leader, the Prime Minister, who not only indicated that the Liberal Party has a talentless lot of people in New South Wales; he is looking for 17 new people to replace members opposite. He also said that the New South Wales Liberals must find some policies, which is exactly what we have been saying. Without policies, the Liberals have no future in New South Wales.

The Hon. Michael Egan: The Prime Minister was listening to you all last week.

The Hon. MICHAEL COSTA: The Prime Minister has been listening to me. He even said that members opposite will not come close to winning the next election without policies. Policies are not hard to develop. All one has to do is sit down, think about it, talk to people and then write down a policy.

The Hon. Dr Brian Pezzutti: Point of order: The Minister's answer should be relevant to the question. I suspect he might be on something himself.

The ACTING-PRESIDENT: Order! I remind Ministers that the new sessional orders relating to questions without notice require that answers be relevant to the question.

The Hon. MICHAEL COSTA: Absolutely! That is an appropriate observation from the chair, and I will continue to be relevant in my answer. I did not raise the question of the commissioner. I did not come into the House and start to play politics with our Police Service. Members opposite did that and, having done that, they need a response. Who is better qualified than the Prime Minister to make observations about the Opposition! The Prime Minister requires 17 new Liberal members to win the next election.

The Hon. Michael Egan: And a bagful of new policies.

The Hon. MICHAEL COSTA: And a bagful of new policies.

APPRENTICESHIP INITIATIVES

The Hon. IAN WEST: My question without notice is directed to the Treasurer, and Minister for State Development. Will the Minister update the House on any Government initiatives designed to encourage the completion of more apprenticeships in New South Wales?

The Hon. MICHAEL EGAN: I thank the Hon. Ian West for asking that important question. Honourable members may be interested to know that since 1995, which happens to be the year in which the Carr Government came to office, the number of people—

The Hon. Dr Arthur Chesterfield-Evans: Speak into the microphone! I cannot hear you if you turn your back.

The Hon. MICHAEL EGAN: We did not have microphones a few years ago; I do not know how the Hon. Dr Arthur Chesterfield-Evans would have got on if he had been here then. Since 1995, the number of people undertaking an apprenticeship or traineeship in New South Wales—

The Hon. Duncan Gay: It was before you got here.

The Hon. MICHAEL EGAN: I have been around a long, long time.

The Hon. Patricia Forsythe: It is since 1996 and the Australian National Training Authority agreement and the new description of apprenticeships.

The Hon. MICHAEL EGAN: I thank the Hon. Patricia Forsythe for that bit of information. Clearly, one of the most important New South Wales Government initiatives that has contributed to this increase has been the Government's decision to provide employers of apprentices with a payroll tax concession. The previous Liberal-National Government in New South Wales did not provide the concessions being provided by the Carr Government. The payroll tax concession given to employers of apprentices became effective on 1 July 1999. Since 1999 this initiative has provided assistance to employers of many tens of thousands of apprentices. While it is important to offer some tax relief for those employers taking on apprentices, we should also acknowledge some of the costs that can be incurred by apprentices. That is why I was pleased to hear my colleague the Minister for Transport, the Hon. Carl Scully, announce recently that the Government will extend concession fares to third-year apprentices.

This means that, from the beginning of next year, transport concessions currently available to first-year and second-year apprentices will be extended to third-year apprentices. Third-year apprentices, like their first-year and second-year counterparts, are required to attend training classes each week. This can prove very costly,

particularly if they have long distances to travel between their home, work and classes. These concessions will make a real difference to third-year apprentices. Take, for example, the third-year apprentice carpenter who lives in Penrith, studies at the Mount Druitt TAFE and works on a construction site in the city. Purchasing a weekly train ticket between these three points each day would now cost $21 compared with the $42 normal fare. This would mean that the third-year apprentice would save $21 each week. Over a one-year period this initiative will deliver a saving of up to $1,092 per year for an apprentice in this position.

The Hon. Duncan Gay: Tell me the year that we didn't have microphones here, if you can remember? What year was it?

The Hon. MICHAEL EGAN: The Deputy Leader of the Opposition should realise that when this House first came into being there were no microphones. This initiative will deliver considerable assistance to those apprentices in their third-year as they seek to advance their technical education and attain accreditation in their chosen field. The extension of the travel concession to third-year apprentices, together with the payroll tax concession for employers taking on apprentices, demonstrates the New South Wales Government's ongoing commitment towards maintaining our highly skilled work force, thereby reinforcing one of our greatest advantages as an attractive investment location.

POLICE OFFICERS PROTECTIVE EQUIPMENT

The Hon. HELEN SHAM-HO: My question without notice is directed to the Minister for Police. Is it a fact that approximately one police officer is killed on the job each year in Australia while another 10 per cent of officers are assaulted during the course of their duties? If so, will the Minister advise what harm minimisation strategies or prevention strategies the Police Service has implemented in order to reduce the occupational health and safety risks that police officers currently face while at work? Given that research in United States of America has shown that vests and body armour can reduce fatalities, the impact of assaults and chest injuries from car crashes or falls, will the Minister advise whether or not the Police Service intends to introduce the compulsory wearing of vests or body armour by on-duty police officers in New South Wales?

The Hon. MICHAEL COSTA: The honourable member has asked a good question and, in relation to the broader statistics about how many police officers are killed or injured each year in Australia, I will take advice on that aspect. In relation to the responsibilities of the Police Service, it has an absolute responsibility under the Occupational Health and Safety Act to provide a safe workplace. That would also extended to any protective equipment that might be required in any operational matters. I will be happy to review that matter, in light of the honourable member's question, to ensure that the appropriate equipment—be it vests or body armour—is used by police officers in the appropriate circumstances. As I said, there is an absolute obligation on the Police Service to ensure safe working conditions for police officers.

Ms DONNA STAUNTON WORKCOVER BOARD APPOINTMENT

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question without notice is addressed to the Minister for Industrial Relations. The question relates to a WorkCover board member Donna Staunton—a former senior executive of Philip Morris (Australia) Ltd, Chief Executive of the Tobacco Institute of Australia and opponent of smoke-free policies and workplaces—who was recently appointed to the WorkCover board, a statutory authority for the prevention of workplace injuries and diseases, including passive smoking injuries. I ask the Minister to review Ms Staunton's appointment to the WorkCover board and, as part of that review, ask for a public statement clarifying that she (a) no longer represent the interests of the tobacco industry, including its opposition to non-smoking bans; (b) supports safe smoke-free workplace policies for all workers; and (c) confirms that she no longer has any financial arrangements with her former tobacco industry employers or related third party?

The Hon. Michael Egan: Point of order: This is clearly not a question; this is a statement by the Hon. Dr Arthur Chesterfield-Evans.

The Hon. Dr Arthur Chesterfield-Evans: To the point of order: I asked the Minister to review the appointment. It was a very clear question. As part of the question I asked that Donna Staunton confirm that she no longer has any financial arrangement with her former tobacco industry employers or related third party.

The ACTING-PRESIDENT: Order! There is no point of order.

The Hon. JOHN DELLA BOSCA: I do not need to review the appointment of Ms Staunton to the WorkCover board. I recently recommended her appointment to Cabinet which in turn made the appointment.

She is an outstanding and an entirely appropriate appointment to the WorkCover board. The honourable member neglected to mention that for some long period of time she was probably the youngest and only woman Vice-President of AMP in Australia, an insurance company. The honourable member is obviously aware that WorkCover has something to do with the insurance industry. I suppose one could argue that, yes, she was good at what she did in her previous employment, defending various corporations—including Philip Morris, which has tobacco as a component of its business. It is also a large producer of packaged foods and, after all, tobacco is a legal product. Ms Staunton is a very intelligent, capable businesswoman and is already making an excellent contribution to the WorkCover board.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I have a supplementary question. Will the Minister please address the three aspects of my question—that she (a) no longer represent the interests of the tobacco industry, including its opposition to non-smoking bans, (b) supports safe smoke-free workplace policies for all workers, and (c) confirms that she no longer has any financial arrangement with her former tobacco industry employers or related third party?

The Hon. JOHN DELLA BOSCA: I have already answered the question.

The ACTING-PRESIDENT: Order! Some parts of the original question could be construed as out of order as they were statements of fact. The honourable member asked a question but he also made statements of fact. They were the matters that the Minister did not address in his reply.

SOUTH SYDNEY COUNCIL BOUNDARY CHANGES

The Hon. DON HARWIN: My question is to the Treasurer, representing the Premier. Now that the South Sydney Council polling has shown that 82.9 per cent of people polled want to have a vote on the issue of proposed boundary changes affecting their suburbs, will the Premier direct the Minister for Local Government to institute a plebiscite of residents in affected areas? Is the Government aware of the projected loss of $23 million in revenue and $180 million in assets from South Sydney Council that the boundary changes would create? Is the forcing through of these changes without public consultation an indication of the Government moving towards forced amalgamations of council areas?

The Hon. MICHAEL EGAN: I am a resident of the South Sydney Council area. I was not polled. Unfortunately, it looks as though I will remain a resident of the South Sydney Council area.

[*Interruption.*]

I would be quite happy if the Deputy Leader of the Opposition wanted to join with me in a unity ticket to try to lobby to have the boundaries of the city extended into the South Sydney Council area. The point is that I was not polled by South Sydney Council, but I know a couple of people who were. They described it to me as the worst example of push polling they had ever seen. One of the questions in this push polling exercise was, "Do you think Frank Sartor wants the cream as well as the milk?" What a ludicrous question. When one of the people I know complained to the person asking the question, he admitted that he was conducting the survey from Western Australia and he agreed that it was the worst example of push polling that he had ever come across and asked my acquaintance to make a formal complaint to the mayor and to the industry watchdog in New South Wales. My acquaintance passed on the information to me. I think it is an outrageous misuse—a criminal misuse—of ratepayers' money. If Councillor Fowler is not careful he might find that that sort of misuse of ratepayers' money ends up with him in very deep hot water. That is a clear misuse of ratepayers' money.

The Hon. DON HARWIN: I ask a supplementary question. Treasurer, given your statement that you would enter into a unity ticket with the Hon. Duncan Gay with a submission, are you not aware that you cannot do that because of what your Minister is doing in shutting down consultation with ratepayers and forcing amalgamations?

The Hon. MICHAEL EGAN: I made a mistake. The Hon. Don Harwin, who is a political historian, knows more about Labor Party rules on unity tickets than I thought he did. His asking a supplementary question has reminded me that unity tickets are not permitted under Australian Labor Party rules.

The Hon. John Della Bosca: And it would have to be with Lee, anyway.

The Hon. MICHAEL EGAN: Certainly not with Ms Lee Rhiannon—

Ms Lee Rhiannon: It has happened in the past with State Labor.

The Hon. MICHAEL EGAN: No, unity tickets were banned all over Australia. We would not have a bar of those coms. We did not want anything to do with them. Party rules banned unity tickets.

The Hon. John Della Bosca: They also banned Labor tickets in trade union ballots.

The Hon. MICHAEL EGAN: This is a very interesting piece of history.

The Hon. Duncan Gay: Point of order: I ask the Treasurer to withdraw his allegation of criminal activity by the Mayor of South Sydney. If there is any activity in this area, I remind him that the Mayor of the City of Sydney spent $197,000 of ratepayers' money—

The Hon. Michael Egan: Not push polling.

The Hon. Duncan Gay: Push polling during the Sproats inquiry.

The ACTING-PRESIDENT: Order! There is no point of order.

AUSTRALIAN SERVICES UNION EXTORTION ALLEGATIONS

The Hon. Dr BRIAN PEZZUTTI: Does the Minister for Industrial Relations recall on 13 November, four weeks ago, giving an undertaking to investigate allegations of extortion demands involving the Australian Services Union? What action did he take to investigate the matter as he promised? As four weeks have passed, can he inform the House of the results of his careful investigations?

The Hon. JOHN DELLA BOSCA: My office received a letter from solicitors representing Focas Shoalhaven Inc. on 9 October 2001 and immediately referred the matter to WorkCover New South Wales for consideration of the matters raised, including the matters raised in the question of 13 November. WorkCover New South Wales has advised that it has no jurisdiction over trade unions and no authority to investigate the actions of trade union officials. Complaints about the other activities or about the behaviour of trade union officials, as I said before, should be directed to the president of the union concerned or to the secretary of the Labor Council of New South Wales. As the question on 13 November used the term "extortion", I inform the House that cases of extortion are criminal matters. People who regard themselves as having been the subject of extortion have the obvious option of referring the matter to the police for investigation.

The Hon. John Jobling: Have you?

The Hon. JOHN DELLA BOSCA: No, because I have not received an allegation of extortion in those terms. Under the Industrial Relations Act 1996 there are provisions outlining the penalties applicable to officers of State organisations who have been found to have acted dishonestly or with deception, to have committed fraud or to have used a position otherwise improperly for profit. That is a criminal charge.

The Hon. MICHAEL EGAN: If honourable members have further questions they might like to place them on notice or wait until tomorrow to ask them.

Questions without notice concluded.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.15 p.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business Item No. 100, outside the Order of Precedence, relating to an inquiry into mental health be called on forthwith.

The House divided.

Ayes, 23

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

Noes, 14

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

Pair

Mr Lynn Dr Burgmann

Question resolved in the affirmative.

Order of Business

Motion by the Hon. Dr Arthur Chesterfield-Evans agreed to:

That Private Members' Business Item No. 100 outside the Order of Precedence be called on forthwith.

SELECT COMMITTEE ON MENTAL HEALTH SERVICES

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.23 p.m.]: I move Private Members' Business Item No. 100 as by leave amended:

1. That a select committee be appointed to inquire into and report on mental health services in New South Wales and in particular:

   (a) the changes which have taken place since the adoption of the Richmond report,

   (b) the impact of changes in psychiatric hospitalisation and/or asylum,

   (c) levels and methods of funding of mental health services in New South Wales, including comparisons with other jurisdictions,

   (d) community participation in, and integration of, mental health services,

   (e) quality control of mental health services,

   (f) staffing levels in New South Wales mental health services, including comparisons with other jurisdictions,

   (g) the availability and mix of mental health services in New South Wales,

   (h) data collection and outcome measures.

2. That the Committee table an interim report by 3 September 2002.

3. That, notwithstanding anything to the contrary in the standing orders, the committee consist of the following members:

   (a) two Government members nominated in writing to the Clerk of the House by the Leader of the Government,

   (b) Dr Pezzutti and Mr Moppett,

   (c) Dr Chesterfield-Evans and Mr Breen.

4. 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 New South Wales and other States and Territories of Australia with the approval of the President, and have power to take evidence and to send for persons, papers, records and things, and to report from time to time.

5. That should the House stand adjourned and the committee agree to any report before the House resumes sitting:

   (a) the committee have leave to send any such report, minutes of proceedings and evidence taken before it to the Clerk of the House,

   (b) the document be printed and published and the Clerk forthwith take such action as is necessary to give effect to the order of the House,

   (c) the document be laid on the table of the House at its next sitting.

6. That on receipt of a request from the committee for funding, the Government immediately provide the Legislative Council with such additional funds that the Committee considers necessary for the conduct of its inquiry.

The state of mental health services in New South Wales is extremely poor. I have received representations from a large number of groups about this matter and they have spurred me into action. It seems that New South Wales has the lowest number of beds of any Organisation for Economic Co-operation and Development country and has not, in any way, a concomitant level of community services to overcome that lack of beds. Honourable members would be aware of the Richmond report, which recommended that mentally ill people be taken from institutions and integrated into the community. Assuming that those people can be treated in the community, which seems to be in doubt, somewhere along the line there has been insufficient support for the acceptance of mentally ill people into the community.

At the time of publication of the Richmond report, conservative hospital elements said that if there were no hospitals and hospitals did not have the power to lobby, funding for mental health services would be taken away. That is certainly what has happened. I do not dispute that the Government recently increased resources, but it would seem that the resources are not nearly enough to meet the needs. A number of groups have approached me and pointed out this terrible situation. In particular, Dr Rachel Falk of the National Association of Practising Psychiatrists came to see me. The opening paragraphs of her presentation state:

> There's a changing demand in Mental Health in more recent years. There is more violence, more suicide, more drug use, different drug use - and this creates a huge problem of increasing numbers of increasingly difficult patients ACUTE services.
>
> There's a large and recurrent difficulty in getting people with acute psychiatric illnesses admitted to hospital. On many days there are no free acute beds in NSW. By acute beds we mean secure bed facilities where there are trained staff in adequate numbers so that patients can be closely observed, adequately treated, kept safe from absconding, and kept safe from other patients.

A gaol hospital is being built which will provide 100 psychiatric beds. I believe there is a problem if people are being treated only after they have committed a crime and have been sent to gaol. Support facilities should be available so that it is not necessary for people to end up in gaol to obtain psychiatric treatment. More support is needed in relation to the provision of drugs for those who are mentally ill and socially disadvantaged. I trust there will be no grandstanding on law and order and that fear of psychiatric patients will not be used by anyone involved with the committee. I have asked for a select committee because I believe that members of such a committee will represent the political composition of this House and will present a tripartite and consensus view of mental health services. I hope the committee will obtain an accurate view of the problems related to mental health services and try to present solutions to them. I commend the motion to the House.

The Hon. JAN BURNSWOODS [5.30 p.m.]: I oppose the motion, and I do so to make the same point I have made in the past in relation to similar procedural motions. The upper House has a series of standing committees that have been in existence for 12 years. Currently it has the Standing Committee on State Development, the Standing Committee on Law and Justice and the Standing Committee on Social Issues, which I have the honour of chairing. Across the board the committees have dedicated, skilled and well-qualified permanent staff. Those committees were set up to enable this House to inquire into matters such as that referred to by the Hon. Dr Arthur Chesterfield-Evans. No member of this House would deny the importance of the issues he has mentioned, but matters relating to health are specifically within the charter of the Standing Committee on Social Issues.

In the past, the Standing Committee on Social Issues has held a number of inquiries relating to health matters. The Hon. Dr Arthur Chesterfield-Evans became a member of that committee when it was nearing the completion of its inquiry into hepatitis C. The committee's report on that matter was welcomed by interest groups, and many of its recommendations have been acted on by the Government. The many inquiries carried out by the Standing Committee on Social Issues have demonstrated its ability to produce thoughtful and unanimous reports based on solid research by a group of dedicated and well-qualified staff. The Standing Committee on State Development and the Standing Committee on Law and Justice are no different: they work hard to produce unanimous reports that do not pull any punches.

I regret that the Hon. Dr Arthur Chesterfield-Evans has not seen fit to refer this matter to the Standing Committee on Social Issues for inquiry and report. I am not sure why he has sought to establish a select committee to conduct the inquiry, given that the motion of which he gave notice referred to General Purpose Standing Committee No. 2. Indeed, he had to seek leave to change that paragraph of the motion, because it referred to that committee. It is a little like a merry-go-round—you take your turn and I will take mine—because he has nominated the Hon. Dr Brian Pezzutti to be a member of the select committee; the Hon. Dr Brian Pezzutti is the chair of General Purpose Standing Committee No. 2 and the Hon. Dr Arthur Chesterfield-Evans is one of its members. Perhaps the distinction has more to do with who chairs the committee. However, that will be decided later.

As I said, I regret the way in which standing committees that have been set up to carry out inquiries and are well staffed are overlooked for political reasons. It is particularly strange bearing in mind that last week the Government bent over backwards to make sure the Standing Committee on Social Issues accepted a much shorter reference involving Internet censorship at the request of the Hon. Dr Arthur Chesterfield-Evans. If the social issues committee was considered suitable to conduct that inquiry last week, I do not understand why it is suddenly not suitable to conduct an inquiry into a matter which this House has specifically written into its charter. I hope the wishes expressed by the Hon. Dr Arthur Chesterfield-Evans at the conclusion of his speech about not wanting to have any grandstanding will be fulfilled. The three standing committees that this House set up, which have served it well, have almost uniformly managed to avoid that kind of behaviour. I wish the select committee well in its inquiry.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.34 p.m.], in reply: I am sorry the Hon. Jan Burnswoods is offended that this inquiry has not been referred to the committee that she chairs. I congratulate her on the good work she has done. The inquiry into Internet censorship was referred to the Standing Committee on Social Issues partly because the matter was finalised so quickly that the referral I had wished to make was not made. The Government saw fit to refer that inquiry, because of its complexity, to the Standing Committee on Social Issues. I am sure that the Hon. Jan Burnswoods will conduct that inquiry admirably.

Honourable members would be aware that the committees were set up following the 1998 election. At that time I believed that the composition of standing committees should reflect the composition of the House. Although I was not successful in having the composition of the standing committees reflect that belief, I do not claim that the standing committees have not been fair in their approach. However, we should be able to attack problems as a House without grandstanding or political point scoring. It is not my intention to chair this select committee. The Hon. Dr Brian Pezzutti has done a good job as chair of General Standing Committee No. 2 and I am happy for him to chair this inquiry. Obviously the provision of mental health services has problems that need to be addressed. I ask honourable members to support my motion.

Motion agreed to.

INDUSTRIAL RELATIONS (ETHICAL CLOTHING TRADES) BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.36 p.m.]: I move:

That this bill be now read a second time.

As my comments are lengthy and similar to those delivered in the other place, I seek leave to incorporate the second reading speech in *Hansard.*

Leave granted.

The Industrial Relations (Ethical Clothing Trades) Bill is the central element of a package of initiatives that the Government is introducing for clothing outworkers. The objectives of this package are to ensure that clothing outworkers receive all the lawful entitlements that other workers enjoy while generally enhancing the long term viability of the New South Wales clothing industry.

Home-based production of clothing is a growing world wide phenomenon. Unfortunately, so too is the exploitation of these workers. Fashion garments are mostly produced for poverty wages in deplorable conditions. They are effectively sweatshops.

Almost half the people are involved in Australian clothing production are located in New South Wales. They meet one quarter of the State's clothing demand. Since the reduction of industry protection in the 1970's the clothing sector has become an industry structured around outwork.

There have been numerous reports, particularly since 1996, highlighting the difficulties faced by workers involved in home-based production. For example, the New South Wales Pay Equity Inquiry conducted by the Industrial Relations Commission stated of outworkers:

> … they are treated oppressively in their ordinary working lives and exploited both in terms of the payment received and their conditions of work. The circumstances of their work are disgraceful.

Clothing outworkers typically work for between $2 to $8 per hour, from which they have to purchase their own machines and meet the cost of overheads. Work cycles are erratic, job security does not exist and there is frequent work injury. A myriad of welfare and industrial problems exist for outworkers and their family members. Many children are sacrificing schooling and social activities to assist at home.

There have been some voluntary steps towards improving the situation for clothing outworkers. For example, some responsible employers and retailers have chosen to comply with ethical codes of practice such as the National Homeworkers Code of Practice and the Target Deed of Co-operation. Also suppliers of clothing and textile products to this Government have clear responsibilities and monitoring obligations.

Notwithstanding these limited exceptions non-compliance with legislative and award requirements for outworkers continues to be endemic in the clothing industry.

The Industrial Relations Act contains a provision deeming outworkers in the clothing trades, however contracted, to be employees. This should be sufficient to ensure that they receive their award entitlements. However the definition is lacking in legal clarity and its perceived weaknesses are being shamelessly abused.

It is proving extremely difficult to achieve improvements because of the nature of the industry itself. Retailers frequently dictate time and financial constraints that affect the whole supply chain down to the outworkers. Multiple layers of subcontracting often make it difficult to identify who is the employer. Outworkers generally lack an understanding of their entitlements and are fearful of complaining. This is exacerbated where the outworkers have a refugee or immigrant background. The entitlements themselves are contained in a complex matrix of federal and state award provisions.

Again quoting from the New South Wales Pay Equity Inquiry's comments on outworkers, "there is a veil of secrecy, intimidation and fear that covers the industry of outworkers".

The Government has never accepted the view that the clothing industry can only be competitive if it is subsidised by its outworkers. In 1999 an Issues Paper "Behind the Label: the New South Wales Government's Clothing Outwork Strategy" was circulated proposing numerous remedial options.

The strategies were refined a result of the submissions received and the resulting package of initiatives, embodying many of the key elements, has been carefully tailored and funded.

Before explaining the bill, I will briefly outline the non-legislative parts of the package.

The Department of Industrial Relations is strengthening its compliance and enforcement activities by expanding from two to four the number of bilingual inspectors. This is to address the additional difficulties arising from language and cultural differences of clothing outworkers from south-east Asian countries. To date persons speaking Vietnamese and Chinese have been appointed.

The Department is in the process of finalising best practice investigative techniques for the clothing industry arising in part from experiences of the Clothing Entitlements Task Force. This Task Force is comprised of officers of the Department of Industrial Relations, the WorkCover Authority and the Textile, Clothing and Footwear Union. These investigative techniques will provide guidelines and tools for future compliance and enforcement activities in the complex chain contracting situations.

The Department will be sponsoring at least one supply chain management project to identify management savings and efficiency improvements that can be achieved.

And finally there will be training for outworkers who want to improve their position in the clothing industry or who would prefer to exit the industry. The Department, in conjunction with the Department of Education and Training, will be establishing and conducting education and retraining programs. Outworkers will be assisted by recognition of prior skills and by up-skilling and re-skilling activities that will be delivered by community based programs.

Turning now to the bill, this is a new, specific purpose statute that significantly extends beyond the traditional employer and employee groups.

The central feature will be the establishment of an Ethical Clothing Trades Council. The Council will be chaired by a person who has relevant knowledge of outwork practices in the clothing industry. Its members will comprise nominated representatives of key retail, business, industry and union organisations in the clothing trades and a community or consumer representative.

The Council will be appointed initially for a maximum of three years. During that time its major priorities will be to support voluntary compliance by the various sectors of the clothing industry with practices that ensure outworkers receive their lawful entitlements. If this is unsuccessful then the Council will provide advice on the need for, and the best format of, a mandatory code.

The Council will report at three monthly intervals to the Minister. The Council's assessment of the success or otherwise of the voluntary measures is required after twelve months' operation.

During that time particularly, the Council will be focussing its endeavours on promoting and fostering relevant consultation and the adoption and observance of self-regulatory mechanisms. These mechanisms include voluntary industry agreements, such as the Target Code, and the Homeworkers Code of Practice. The Council will be supporting changes designed to increase their effectiveness.

The Council will advise on developments in the industry and compliance issues and may conduct education and information dissemination programs.

The introduction of a mandatory code of practice for the clothing industry is provided for in the bill. However, it is not the Government's preferred option. A mandatory code will only proceed if the self-regulatory mechanisms fail to deliver lawful entitlements to outworkers or the industry participants are not attempting in good faith to negotiate improvements or extensions to those mechanisms.

A mandatory code of practice would be made by Ministerial order and published in the Government Gazette. Once in force any amendment of the code, any exception from its requirements and any proposal for its revocation would be undertaken having regard to the advice of the Council.

Failure to comply with an obligation under the code will carry a maximum penalty of $11000. Enforcement procedures under the Industrial Relations Act are applied within the bill for the purpose of enforcing the code. For example, Departmental inspectors' investigative powers will extend to any person who is required to comply with the code.

A specific exemption from the requirements of the Trade Practices Act is provided for a mandatory code. This is because adherence to the code may result in agreements affecting competition or other anti-competitive arrangements. In this respect a mandatory code is likely to contain similar elements to those that are currently in the voluntary Homeworkers Code. The Australian Competition and Consumer Commission has already granted the Homeworkers Code an authorised exemption under the Trade Practices Act after concluding that any anti-competitive effect is outweighed by the benefit to the public.

There is provision for persons or bodies to be exempted from a mandatory code. This is intended to offer both incentive and reward for those responsible organisations that demonstrate a continuing commitment to effective voluntary mechanisms such as those mentioned earlier.

In addition to the separate statute, the bill contains several amendments to the Industrial Relations Act. These are also directed at ensuring that clothing outworkers receive their lawful entitlements.

As mentioned earlier there has been significant attempted avoidance of the deemed employee provision of the Act relating to clothing outworkers. Various arguments are given to support avoidance, for example, the current definition requires an actual contract of service employment, or an employer must be the person with whom the outworker directly deals, or an outworker must be covered specifically by a clothing trades award.

The definition is being amended to give greater clarity and to ensure that it properly applies to those who were always intended to be within its scope.

In respect of remuneration as an employee, outworkers are especially disadvantaged because of the complex subcontracting chains that exist in most instances between actual garment production and sale. It is often very difficult to establish who is the employer and outworkers are seriously hampered in taking action for outstanding remuneration. Sham layers of operation have been used specifically to avoid payment.

In addition to current award and legislative provisions concerning liability and recovery, the bill inserts a new mechanism which will allow a clothing outworker to claim unpaid remuneration from his or her employer. The claims procedure will apply to all employers throughout the clothing chain, including deemed employers, but excluding any person whose sole connection with the clothing industry is the sale of clothing by retail.

Under the procedure a claim will be made by serving a statutory declaration with supporting details on the apparent employer. The apparent employer is the person whom the outworker believes to be his or her employer.

Practically this may or may not be the person with whom the outworker directly deals in arranging the work. In terms of the definition of "employer" it is the person or persons for whom the outworker performs work, either directly or indirectly, even if they are higher up the production chain. Indeed, this claims procedure may entitle the outworker to validly serve a claim upon the principal manufacturer or fashion house which ultimately receives the finished work. The person served with the claim is liable for payment unless within 14 days the actual employer is identified and within a further 14 days that person accepts and pays the claim in full. To the extent that the claim is unpaid the apparent employer remains liable.

An apparent employer who pays all or part of the claim of an actual employer may deduct that amount from any money owing to that other person. This provision will be particularly equitable where the outworker serves the claim on a person higher up in the production chain who deals through sub-contractors. A similar process already exists in the voluntary Homeworkers Code.

A specific offence will safeguard against any possible abuse of this provision. Also, all rights of both the apparent and actual employer to take proceedings in relation to money owed are preserved.

If necessary, the usual recovery procedure under the Act will be able to be used. To improve its effectiveness for clothing outworkers the definition of remuneration is extended to statutory annual and long service leave entitlements whether or not they are included in an award. The only defences to a claim will be that the work was not done or that payment for the work that was claimed to have been done is incorrect.

Intimidation to prevent or discourage a claim or the making of a false statement will be an offence with a maximum penalty of $11000. It is expected that the procedure will encourage more transparent relationships and an overall reduction in inefficient sub-contractor chains, particularly where those chains have been used primarily for avoidance purposes. It should also promote arrangements that are based on payment of the correct remuneration to clothing outworkers.

The powers of Department of Industrial Relations inspectors that are used for the purpose of compliance and enforcement are amended in the bill. Inspectors have general powers to enter premises of an employer and inspect any work being done. Entry to premises that are used for residential purposes requires the permission of the occupier or a search warrant.

In respect of the clothing industry the amendment will enable entry to premises of the employer that are also used for residential purposes without the need for permission or a warrant. The amendment will enable the investigation of sweat shops in the suburbs that are organised by an employer for the performance of work in the clothing trades or the manufacture of clothing products.

These Industrial Relations Act amendments particularly complement the non-statutory initiatives that were previously outlined.

The Government is committed to ensuring that clothing outworkers receive their lawful entitlements such as pay, leave and other conditions and a safe working environment. This will best be achieved by strategies that promote a vibrant clothing sector within the State.

The initiatives in the Industrial Relation (Ethical Clothing Trades) Bill and the wider package are designed to strongly support a mature approach by the clothing industry where all participants receive a fair share. Inequitable and avoidance practices are not acceptable. The bill makes provision for intervention through a mandatory code and the Government will act if necessary.

The Government will also be keeping under review the wider textile industry with a view to considering later expansion of these measures.

I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [5.37 p.m.]: I lead for the Coalition on the Industrial Relations (Ethical Clothing Trades) Bill. It is certainly an interesting bill and I welcome the opportunity to comment on it. The Coalition does not oppose the bill, but will seek to amend certain aspects of it during the Committee stage. The Government is fully aware of our proposed amendments, and has been briefed by me and my staff as to the rationale behind them. The main purpose of the bill, according to the Government, is to protect the lawful entitlements of outworkers in the clothing trade. The Government, by means of the bill, intends to establish an Ethical Clothing Trades Council comprising members representing different sectors of the clothing industry and chaired by a person who has knowledge of outworker practices in the clothing trade.

The council will be able to make recommendations concerning the clothing industry and outworker practices in the clothing trade and will make quarterly reports on relevant matters. It is intended that the council will foster what are described as voluntary self-regulatory provisions, such as the 1997 national homeworkers code of practice, or the 1995 target deed of co-operation, known as the target code. After twelve months of operation, the council is to report on industry compliance with voluntary self-regulation and then make a recommendation as to whether a mandatory code should be imposed on the clothing industry.

The bill also amends the Industrial Relations Act 1996 to facilitate the recovery of unpaid remuneration by outworkers in the clothing trade whereby an outworker can serve a claim on an apparent employer and provides for the liability to be transferred to an employer, if necessary. The amendments to the Industrial Relations Act clarify the powers of Department of Industrial Relations inspectors to check relevant records and allow inspectors to enter premises without permission or a search warrant if part of the premises are used for both residential purposes and work in or in connection with the clothing trade.

Before addressing the specific provisions of the bill and our proposed amendments, I should like to briefly examine some of the background to the legislation. For many years the working conditions of clothing outworkers attracted a great deal of attention before the Government finally got around to introducing the bill. However, that is not to say that ensuring compliance in the clothing industry was never heard of until the legislation was introduced. In fact, in 1994 the then Coalition Government, under the stewardship of the current Leader of the Opposition, Kerry Chikarovski, who was then the Minister for Industrial Relations and Employment, established the clothing outworkers industry task force, which was responsible for enforcing the law in relation to clothing outworkers.

However, I remind honourable members that the Carr Government abolished the task force after gaining office in 1995. The crocodile tears we see time and again for clothing outworkers dry very quickly the moment they hit the floor of this place, bearing in mind the past actions of the Carr Government since coming to power in 1995 and its current neglect of clothing outworkers. I wonder whether the Minister for Industrial Relations, when he was given this legislation and before he was told of the forthcoming reforms, was aware of the history of his Government's pathetic performance in addressing the needs of clothing outworkers.

The Hon. Duncan Gay: It was their early days—like Costa's early days. They were doing silly things, like Costa is.

The Hon. MICHAEL GALLACHER: I acknowledge the Deputy Leader of the Opposition's proper interjection: that was during the Carr Government's silly days, which yet again we are revisiting under the current Minister for Police. Thank goodness, come rain, hail or shine, irrespective of the election result in 2003, the Minister for Police will only be in office for 12 months. Irrespective of what happens in the 2003 election campaign, there will be a cheer when his 12 months are up. Given the answers that the Minister for Police has been giving in recent times, his performance is quite ordinary.

The Hon. John Della Bosca: He's been pretty good. He's got you worried!

The Hon. MICHAEL GALLACHER: No, he does not have me worried at all. He actually looks quite silly. Someone needs to instruct him that eventually the Minister for Police will have to bring into the Chamber a folder that has some answers to questions. The other thing he needs to do is to take his hand off his hip; it just does not suit the look. This bill has no doubt been introduced—

The Hon. Ian Cohen: It turns you on, does it?

The Hon. MICHAEL GALLACHER: No, it doesn't turn me on at all.

The Hon. Ian Cohen: You talk about it constantly. You go on and on about it.

The Hon. MICHAEL GALLACHER: The Minister for Police is trying to create an image, but he is letting himself down every time he swaggers up to the microphone. If that is your bag, that is fine, but it is definitely not mine. This bill has no doubt been introduced by the Government in response, at least partially, to pressure from the current Fair Wear campaign. Fair Wear was established in Melbourne in 1996. As stated on its web site, its main aim is to eliminate the exploitation of home-based outworkers.

The elimination of illegal exploitation of clothing outworkers is, of course, to be applauded, as is the elimination of the exploitation of any other members of the work force. However, concerns have been raised about the real motives behind campaigns such as the Fair Wear campaign. The Institute of Public Affairs recently released a report into the clothing manufacturing industry and what it alleges to be the campaigns by an anti-industry coalition of certain government, union, church and community groups. The report also contains a substantial section dealing with the activities of Fair Wear. It is also well known that Fair Wear has involved schools in its activities.

In addition to concerns about campaigns such as the Fair Wear campaign, legitimate concerns were raised during debate on this bill in the other place about the Government's lack of genuine commitment to improving the conditions of outworkers. Since taking over the Industrial Relations portfolio, the Minister for Industrial Relations has specifically referred to outworkers on only four occasions, excluding his answers to three questions about the Fair Wear campaign asked by Coalition members during question time last month. The four occasions were in November last year, and March, June and November this year. On all four occasions the references to outworkers were contained in responses to Dorothy Dix questions during question time. It is obvious that all of that was intended to provide a suitable alibi for the Minister so this bill could be introduced. However, if the Government considered the legislation to be so important, one must wonder why it was not introduced earlier. Why was it left until the end of the year to be dealt with?

The Premier made a major announcement about clothing outworkers on Sunday 25 March this year. On pages 16 and 17 of the Department of Industrial Relations 2000-01 annual report specific details are provided about this and related issues. Only two days after the Premier's announcement Minister Della Bosca outlined in this House the major details of the plan, which included some of the provisions now contained in the bill. The Government cannot deny that it has taken from March to December, or nine months, to finally introduce this bill and rush it through in the last week of sittings for the year. The Government has acknowledged that about half of the Australian clothing industry is located in New South Wales. However, the bill does nothing to stop businesses moving interstate or offshore to escape its provisions. The bill applies only within the New South Wales jurisdiction.

The Hon. John Della Bosca: How are we going to do that?

The Hon. MICHAEL GALLACHER: The Minister for Industrial Relations throws his hands up and asks, "How are we going to address it?" He does not have an answer. He has been sitting on his hands for the

last nine months. Indeed, he has been sitting on his hands for a year and a half in relation to the matter of independent contractors, which also relates to the subcontracting of clothing outworkers, but he does not have an answer. The Minister has been sitting on his hands for too long.

The Hon. Duncan Gay: He didn't have an answer in Tamworth.

The Hon. MICHAEL GALLACHER: No. We gave him the answer in Tamworth: start packing your bags; you are not going to be there for much longer. I will now turn to the specific provisions of the bill. Clause 3 provides definitions of various terms used in the bill. It defines an outworker as follows:

> … any person (not being the occupier of a factory) who performs outside a factory any work in the clothing trades or the manufacture of clothing products, whether directly or indirectly, for the occupier of a factory or a trader who sells clothing by wholesale or retail.

The clause also provides definitions of the lawful entitlements of an outworker conferred by law. Clauses 5 to 10 establish the Ethical Clothing Trades Council of New South Wales. Clause 6 provides details concerning the membership of the council. I note that a number of key stakeholder groups are to have representation on the council, including the Australian Retailers Association, Australian Business Ltd, the Australian Industry Group, the Labor Council of New South Wales, and the Textile Clothing and Footwear Union of New South Wales. In addition, the Minister will appoint a chairperson and one other member who has either experience in the industry or represents consumer, community or other interest groups.

Clause 7 details the functions of the council. In particular, the council must advise the Minister of the clothing industry's level of compliance with its obligations to employees, the promotion of voluntary codes of practice and educational campaigns. The council must also make recommendations for a mandatory code of practice if deemed necessary. The council is solely responsible to the Minister. Clause 8 refers to the reporting requirements of the council, and provides that the council is required to report to the Minister on various compliance issues. One of the amendments I will move in Committee deals specifically with the reporting requirements of the council.

Clause 9 provides that, after a period of 12 months operation, the council is to report to the Minister on the results of its efforts and on whether it considers that a mandatory code, with associated penalties for non-compliance, should be introduced in the clothing industry. Clause 10 allows the council to draw on a government department to support its operation, whether by the provision of staff and/or facilities. Clauses 11 to 18 deal, in advance, with a mandatory code of practice for outworkers.

Clause 12 provides that, "the Minister may make a code of practice only after considering a report of the Council under section 9". However, after that it confers on the Minister quite substantial powers in advance , long before a recommendation is actually made. The measure reads as though the Government expects the issue of whether to implement a mandatory code to be a foregone conclusion. In particular, I note that clause 13 sets out maximum penalties for employers failing to comply with a mandatory code of practice that has not been recommended and does not as yet exist. However, clause 9 (2) (b) indicates that it is actually the council that is supposed to make recommendations as to "the content and suggested penalties for failure to comply with such a code". Evidently, the Government is already attempting to put the goalposts in position in advance. I remind honourable members that the Minister made the following statement in this House on 27 March:

> Employers will be given 12 months in which to voluntarily comply with the code. After 12 months the code will be mandatory.

Even though the Government has not been as overt in the bill, it appears to have a desired outcome already in mind. The Coalition will watch these developments very closely. The other factor to bear in mind is that by the time the 12-month voluntary period expires, the March 2003 State election will be upon us, so that will shield the Government from any criticism about the effect of its mandatory code, which, in all likelihood, will not even be in operation by that time. The Government is asking people to trust that it will do the right thing. Given the Government's lack of concrete action towards outworkers since 1995, this request should not fill anyone in this place—or, indeed, outside the Parliament—with any level of confidence.

Clause 17 protects the operation of a mandatory code, if established, from the provisions of the Commonwealth Trade Practices Act 1974 and the Competition Code of New South Wales. Clause 18 indicates that regulations may provide exemptions from the operation of the mandatory code. Part 4, clauses 19 to 21, contains miscellaneous provisions:. Clause 19 allows for the making of regulations under the Act, clause 20 provides for the amendment of the Industrial Relations Act 1996, and clause 21 provides for a review of this legislation after five years of operation. It is worth noting that this is the only clause in which the Government

has provided for a review, or oversight, by this Parliament—five years after the event. In every other aspect the Ethical Clothing Trades Council will report directly to the Minister, not the Parliament, and the discretion to create a mandatory code and its associated measures are left in the hands of the Minister.

This happens far too often with this Minister pushing his legislation. We see it time and again with workers compensation legislation. We witnessed the duplicitous way in which the Government agreed to reforms to motor accidents legislation. The Government promised to support amendments of the Hon. Helen Sham-Ho, but was caught out pulling the wool over her eyes. We saw it again only a few days ago with workers compensation legislation. The Government agreed to undertake a review, but the provision relating to the review was not proclaimed with the first tranche of mark II workers compensation reforms. The Government was again exposed. Duplicitously, it regards the review responsibilities of this House with contempt. The Special Minister of State is without doubt the biggest offender in this regard; he neglects his responsibility and commitment to bring matters before the Parliament for scrutiny.

As I indicated earlier, the Coalition will not oppose the bill, however, it is of the view that the Ethical Clothing Trades Council—and the Government for that matter—should be more accountable to the Parliament and to the people of this State. My amendments will seek to have the Minister table in Parliament reports received from the council. They will also require the council to produce an annual report providing details of its operations throughout the year in monitoring the clothing industry and providing details of any prosecutions that have resulted from the same. This will provide those on both sides of the political spectrum, who may well have differing views about the extent of exploitation, to review the results of the council.

In addition, the Coalition believes that any determination of the clothing industry made by the Government, acting on a recommendation from the council, should be subject to sections 40 and 41 of the Interpretation Act 1987 in the same way as those sections apply to statutory rules. In other words, any relevant determination by the Government should be reviewable in the same way as a regulation to ensure the full scrutiny of this Parliament. The Government has taken no action since 1995. Even though this bill has been introduced, a review will only take place in 12 months time.

The Hon. Dr Brian Pezzutti: Where is the Minister?

The Hon MICHAEL GALLACHER: The Minister is on the telephone ringing his SP bookmaker to try to get the odds on the next by-election. The figures are blowing out into treble figures because of the Government's performance in Tamworth. It could not even get a win and a place.

The Hon. Duncan Gay: They couldn't get a place in the trifecta.

The Hon. MICHAEL GALLACHER: As the Hon. Duncan Gay says, they couldn't fill a place in the trifecta. The Minister may be ringing a placement agency to try to get a job picking up glasses at the Central Coast Leagues Club. The Parliament should be given an opportunity to review this determination in the same way as it reviews other regulations to ensure full scrutiny. The Government has been more than neglectful; it has acted disgracefully by walking away from clothing outworkers since 1995. Labor could have built on the fine work of the 1994 reforms of the Leader of the Opposition, Kerry Chikarovski, who was then the Minister for Industrial Relations. However, the Government has chosen to walk away from clothing outworkers. We must ensure that the Parliament holds it accountable and that the council and the measures resulting from the passage of this bill receive the scrutiny of the Parliament.

In conclusion, the Coalition does not oppose the bill but will seek to move amendments in Committee to bring about more appropriate levels of accountability to the Parliament and to the community. The Government has made a degree of noise about outworkers since 1995, however, until the introduction of this bill we never saw any concrete legislative intent. I hope this is not simply another example of the Government performing a smoke and mirrors act on clothing outworkers.

Ms LEE RHIANNON [5.58 p.m.]: This bill is the result of the hard work of the Fair Wear organisation and the Textile, Clothing and Footwear Union of Australia. Progressive legislation rarely comes before this House without considerable hard work by organisations in the wider community.

The Hon. John Della Bosca: Hear! Hear! You are right, Lee.

Ms LEE RHIANNON: That happened in this case. I acknowledge the interjection of the Minister, who said, "Hear! Hear! You are right, Lee." It is pleasing how well the popular front is working. There is an

urgent need for a change in the way outworkers are treated at work. The current system only serves those who operate and profit by exploiting workers. The Government must implement a legally enforceable range of measures to minimise the exploitation of outworkers. The Government enunciated a similar position in the lead-up to the 1999 election, when, in relation to the rights of outworkers, it issued a media release on 8 February 1999, approximately seven weeks before the election. The Government's promise included tougher penalties for non-compliance, which will be in place, and a central registry to put retailers in touch with ethical suppliers and provide retailers with the right and responsibility to check records of suppliers. Those measures are not in place at the moment; their existence will depend on how the mandatory code plays out. Another suggestion was a separate outworkers agency to monitor the industry. The Government is yet to establish that agency. The Greens will monitor that situation because we believe such a body is needed.

The Government has honoured its other four commitments: an education campaign for consumers to reward ethical companies and motivate those not abiding by award conditions; the development of an education and training program for outworkers; an increase in the enforcement activities of the Department of Industrial Relations and WorkCover in monitoring and disciplining those who exploit outworkers; and the appointment of two bilingual inspectors with knowledge of the Vietnamese and Chinese communities to assist in clamping down on sweatshop operations. The Greens are pleased that those last three measures are in place and that the Government has acted on some of the other proposals put forward in February 1999. The Greens will watch closely to see whether the Government honours all its promises in this important area.

The Greens are most concerned about some of the amendments proposed by the Opposition to this legislation, but honourable members need to remember that unless we pass this bill we will not move forward from the present very onerous conditions that allow massive exploitation of outworkers. It is also important that honourable members are aware that similar campaigns to that of Fair Wear are being conducted by unions in many other countries. Does the Minister not think the innovative actions of Fair Wear are hard to beat?

The Hon. John Della Bosca: That is right.

Ms LEE RHIANNON: I am pleased that the Minister and the Greens agree that the union has done a fantastic job.

The Hon. John Della Bosca: Global action is good.

Ms LEE RHIANNON: Yes, we agree that global action will be good.

The Hon. John Della Bosca: Globalisation has some good aspects.

Ms LEE RHIANNON: The Greens have always said that: It is corporate globalisation that the Greens are against. International workers of the world unite! One would have to say that was probably the first round of globalisation. In this case the tripartite United Nations body, the International Labour Organisation, has issued principles relating to the rights of outworkers. They are described as the Code of Labour Practices for the Apparel Industry Including Sportswear, which was developed by the Clean Clothes Campaign together with international trade unions in direct consultation with various worker organisations in the producing countries. Many honourable members are aware that exploitation of workers is carried out to the extreme in Third World countries where unions are either banned or are very limited in their activities.

The basic principles of the code are: freedom of association, a right to collective bargaining, no discrimination of any kind, no forced or slave labour, a minimum employment age of 15 years, health and safety measures, a maximum working week of 48 hours and voluntary overtime of 12 hours maximum, a right to a living wage and the establishment of an employment relationship which particularly involves the need to have independent monitoring. This legislation fits most appropriately under that umbrella. In Australia, the 300,000 outworkers, most of whom are in New South Wales, are home-based workers paid piece rates. The ratio is 14 outworkers for every one factory worker. I have heard the argument from some quarters of the Coalition that we have to be cautious and slow in working out these outworker issues, otherwise the clothing industry will be devastated. That argument has been debunked time and again. Once this legislation is in place the industry will be strengthened, not weakened, in New South Wales and Australia.

The pay rate for outworkers is approximately $2 an hour. Outworkers suffer a high incidence of chronic injuries that go hand in hand with people, particularly women and often very young women, who are forced to work at home under appalling conditions for very long hours. Fair Wear has supplied the Greens with

considerable material during the years and we are pleased to have been able to support many of its actions and participate in many of its meetings. The organisation is a coalition of churches, unions and community organisations that have worked hard and consistently to eliminate the exploitation of outworkers. We thank them so much because their efforts have helped to advance this legislation.

In 1996 a voluntary homeworker code of practice was drawn up committing retailers and manufacturers who signed it to ensuring fair wages and conditions for the makers of their garments. Some retailers refused to sign the code and Fair Wear, to its great credit, and its many supporters from other unions, organisations and some progressive political parties protested time and time again with some very creative actions. By 2000, some 140 companies had signed the code. It was pleasing that so many came on board; many were reluctant and suspicious in the early days. The code is supported by an accreditation and labelling system, which has taken some time to develop. That is partly understandable because obviously companies want to protect their profits. They find it hard to believe that they can still be profitable if they do not exploit workers to the same degree as they have done traditionally. But life moves on and changes. Many companies have recognised that we are in the twenty-first century and the conditions under which their workers are employed need to be updated. There have been many breakthroughs.

The monitoring system developed consists of three aspects: an accreditation system for fashion houses, manufacturers and retailers who arrange the production of clothing and a "No sweatSHOP" label, which depicts a threaded sewing needle with the thread forming the words of the label. The label accredits companies. A company is allowed to use the label to show its customers it is doing the right thing. A computerised garment sewing time manual translates the award hourly rate into fair piece rates for each garment an outworker sews. Companies must use the manual if they wish to display the "No sweatSHOP" label. Despite the provision of a great quantity of information and the availability of seminars many retailers have refused to participate in the "No sweatSHOP" labelling process. The participation of retailers and their promotion of these processes are, of course, essential if the code is to put a stop to the exploitation of outworkers. This legislation is an advance but it is only one step towards bringing decent conditions and pay to all outworkers.

I will give three examples of innovative action that has helped to bring us to the consideration of this legislation. One aspect of the Fair Wear campaign is the Fair School Wear campaign, which involves the presentation of certificates to schools that give a statement of commitment to investigate how their school uniforms are made. This is a particularly clever aspect of the Fair Wear campaign. It has identified and targeted different groups for which clothing is obviously manufactured en masse and talked to them about how they can ensure that that clothing is not produced by people who are being exploited. This good initiative involving a number of schools was launched last year at Leichhardt High School by the previous Attorney General, and Minister for Industrial Relations.

An exciting initiative for those of us who love the surf was introduced by the Newcastle Fair Wear group. It directed its attention to surf wear, which is particularly popular with young people who are interested in the latest surfing fashions, many of which are produced by workers who are exploited in a totally unacceptable manner. Lobbying began in summer last year when about 80 manufacturers were contacted by letter and asked to sign the homeworkers code of practice. That action was not hugely successful—campaigns never are at first—so the group followed it up with further letters and personal telephone calls that targeted many prominent surfing companies. This action resulted in a number of companies signing the code and discussions continuing with those that did not. The campaign was a considerable breakthrough. At several of the Newcastle surfing events held in March there were works of art masquerading as Fair Wear banners. This is another example of the innovative action taken by this fantastic organisation.

The Fair Work Wear campaign centres on work uniforms. It involves employees and their unions lobbying their employers to ensure that uniform manufacturers are not exploiting the makers of their clothes. As part of this process employers are asked to sign a deed of co-operation with the Textile, Clothing and Footwear Union of Australia. Many of these campaigns are ongoing and will result in new innovations on the part of Fair Wear. We all recognise that this work is not yet done, but the Greens are very pleased to support this legislation. We will re-enter the discussion in Committee as we are concerned about the mischief being perpetrated by the Coalition in attempting to raise the bar and confuse the operation of this legislation. However, we support the bill.

The Hon. HELEN SHAM-HO [6.12 p.m.]: I welcome the Industrial Relations (Ethical Clothing Trades) Bill and commend the Government for this positive step towards alleviating the exploitation of clothing outworkers in New South Wales. Among other things, the bill establishes an Ethical Clothing Trades Council.

This will be a tripartite body comprising members from the retail and manufacturing sectors, the community and unions as well as government representatives. The council will have a broad range of functions, including providing advice to the Government on the clothing industry and its levels of compliance with voluntary codes, such as the homeworkers code and the target code.

Under clause 9 of the bill the council will be required to report to the Minister in the next 12 months about the implementation of voluntary codes by the clothing industry. This report will include recommendations as to whether the management code would improve compliance and suggest penalties for failure to comply with the code. As other honourable members have said, there have been problems with voluntary code compliance. These voluntary codes have been in place for some years. Page 44 of the Government issues paper, released by the Department of Industrial Relations in December 1999 and entitled "Behind the Label—the NSW Government Clothing Outwork Strategy", acknowledged that compliance is a problem with voluntary codes of practice.

I strongly support the implementation of a mandatory code. Fair Wear—a major stakeholder involved in the formulation of this bill—believes a mandatory code is the most effective way of preventing expectation of clothing outworkers. I certainly agree. Legislation is long overdue as the problem was identified in the mid-1980s when I was a commissioner with the then Ethnic Affairs Commission. The Labor Government pledged during its re-election campaign in early 1999 to develop a strategy to improve the working conditions and the social wellbeing of clothing outworkers in New South Wales. The issues paper that I mentioned was extremely comprehensive, covering industry background and existing problems. It also detailed the Government's vision, a strategy and several proposals to overcome those problems. However, it is two years since that issues paper was released and we are seeing only now the legislative part of the Government's package that aims to reform the appalling employment conditions of outworkers.

The Hon. Dr Brian Pezzutti: We have to write the regulations yet.

The Hon. HELEN SHAM-HO: I thought we had to wait 12 months. As I said earlier, I have been concerned about the plight of clothing outworkers for some years. The majority of these workers are migrant women, many of whom speak little or no English and cannot get other jobs so they are at the mercy of ruthless retailers and manufacturers. They are paid a pittance for their work—usually $2 to $3 per item of clothing—and work long hours in often cramped conditions, such as garages, in dim light. Children often help out in order to make ends meet, sometimes skipping school in the process. I have spoken previously in this House about outworkers. In March 1998 I supported a motion in the following terms:

> … this House supports the Fair Wear campaign to assist homeworkers in the clothing, textile and footwear industries to achieve their rights to a living wage and to work in a safe and healthy environment.

In May 1998 I asked the then Attorney General, the Hon. Jeff Shaw—of whom I was very fond as he always did the right thing—a question about the expectations of clothing outworkers.

The Hon. Dr Brian Pezzutti: He said the right thing but he didn't do anything.

The Hon. HELEN SHAM-HO: He did. He gave a comprehensive and detailed answer—I will not repeat it now. I am pleased that, as part of the Government's legislative reform package, the Department of Industrial Relations has expanded the number of bilingual inspectors from two to four in order to assist the many outworkers who do not speak English. Inspectors who speak Vietnamese and Chinese have been appointed, and I hope that more inspectors will be appointed if necessary to ensure that exploitation does not continue. This will help to address the double disadvantage that many clothing outworkers must endure: lack of language skills and a lack of negotiating power with contractors, who are often well-known clothing manufacturers.

I acknowledge the campaign that has been run by Fair Wear New South Wales for the past five years. Fair Wear is a national coalition of churches, community organisations and unions that together have put pressure on governments and raised public awareness of the exploitation of clothing outworkers. For some time Fair Wear has encouraged manufacturers to sign the mandatory code of practice, which will provide accreditation for them. Although Fair Wear has worked hard I do not think manufacturers have been responsive. At the end of the day manufacturers need that mandatory code of practice. I believe that after a 12-month period it will come to fruition. I referred earlier to the Government's 1999 Behind the Label strategy. This bill has received the support of Fair Wear Campaign (New South Wales).

Last week Fair Wear representatives addressed members on the crossbenches on this issue. I thank them for their time and effort. They said that they were happy with the bill but their main concern was to get the

bill through Parliament during this session. However, they were concerned about the Coalition's proposed amendments to the legislation. They said that they hoped those amendments would not further hinder the implementation of the mandatory code of practice. I will follow the advice given to me about whether or not to support the Opposition's amendments. I commend the bill to the House.

Debate adjourned on motion by the Hon. Peter Primrose.

COMPULSORY THIRD PARTY INSURANCE

Ministerial Statement

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [6.21 p.m.]: As honourable members may be aware, following the 11 September terrorist attacks, international reinsurers have indicated that they intend to withdraw liability cover for terrorist-related insurance losses. The withdrawal by reinsurers of cover for terrorist-related losses has wide implications across the general insurance sector in Australia. Clearly, it is an issue that requires a national approach.

The international reinsurers' action also has implications for the New South Wales motor vehicle compulsory third party [CTP] scheme. That is because New South Wales licensed CTP insurers are required to provide unlimited liability cover for death or injury resulting from a motor vehicle accident. Under the Motor Accidents Compensation Act 1999 the statutory third party policy requires a CTP insurer to indemnify the owner and/or driver of a vehicle for death or injury which is a result of and is caused by the vehicle being involved in a collision or near miss, running out of control, or having a defect during its use or operation.

Advice provided by senior counsel to the New South Wales Motor Accidents Authority confirms that the legislation is not confined only to negligent actions involving a motor vehicle; it also covers intentional injury, for example, such as that which could result from a terrorist action using a motor vehicle as a weapon. The majority of New South Wales CTP insurers are due to renew their insurance by 1 January 2002. As a result of international reinsurers' withdrawal of cover for terrorist-related losses, New South Wales CTP insurers will, from 1 January 2002, be exposed to a potential liability that will no longer be covered by reinsurance.

The action of reinsurers has serious potential to impact on the affordability and viability of the New South Wales scheme. Accordingly, it is the intention of the New South Wales Government in the next session of Parliament to introduce amending legislation to respond to these changes in the international reinsurance market. The Government proposes to amend the Act to exclude risk exposure for any terrorist act involving a motor vehicle. The Queensland Parliament recently enacted a similar change to the Queensland CTP scheme which, like the New South Wales scheme, is also underwritten by private insurers. The Government's proposed amendments will be drafted to take effect for policies issued on or after 1 January 2002.

The proposed measures will be put in place for a limited period of up to only 12 months to address the immediate ongoing viability of the New South Wales CTP scheme. The Government is concerned to ensure that the scope of the amendments is strictly limited to only those circumstances directly attributable to a national or international terrorist attack. As I indicated earlier, the international reinsurance issue, which affects the general insurance sector across New South Wales and across Australia, is not limited only to the New South Wales CTP insurance scheme. Despite these significant national implications, as yet the Federal Government has not announced any intended actions. The New South Wales Government calls on the Federal Government to work urgently with the insurance industry to find an effective solution to this problem.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [6.25 p.m.]: Recently the Opposition raised this issue in Committee. At least now we have some indication that the Government is aware of the issue. I do not mean by that statement to infer that the Government was not previously aware of it, but at least now we have an indication of the Government's views about the compulsory third party [CTP] scheme. The Minister did not refer in his ministerial statement to workers compensation. Consider for one moment a devastating incident—such as the 11 September incident—in a workplace in Sydney. The impact of such an incident on CTP green slips and on the scheme in general would be insignificant compared to the impact on workers compensation and premiums in general. It would be interesting to hear the Minister's views about the impact of such an incident on workers compensation.

[*Interruption*]

I acknowledge the Minister's interjection, just as I acknowledge his statement earlier that this international reinsurance issue, which will affect the general insurance sector across Australia, is not limited only to the New South Wales CTP scheme. The Minister acknowledged, in effect, that not only CTP insurance will be affected by this issue; workers compensation will also be affected. Opposition members are concerned that any escalation in premiums could well be disguised in the general confusion that might follow when reinsurers are experiencing difficulties.

The Minister, who hobbled out of the Chamber after banging his knee on the chair, should not use that as an excuse to claim workers compensation. When drafting reforms to workers compensation legislation he must ensure that there is truth in advertising. If premiums go up as a result of the effect of the 11 September terrorist attacks, we must be able to attribute that rise in premiums to the effect that has had on the insurance industry. It must not be shown to be just a grab for cash by the New South Wales Government.

[*The Deputy-President (The Hon. Henry Tsang) left the chair at 6.28 p.m. The House resumed at 8.15 p.m.*]

INDUSTRIAL RELATIONS (ETHICAL CLOTHING TRADES) BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. RICHARD JONES [8.15 p.m.]: This bill establishes an Ethical Clothing Trades Council, whose aims will be to foster voluntary mechanisms to deliver improvements in pay and conditions to clothing outworkers. The council will advise the Government on developments in the clothing industry and their effects on the lives of outworkers, levels of industry compliance and ways to improve it, and the efficiency of the self-regulatory mechanisms. After 12 months of establishment the council will be required to report to the Government on action, whether voluntary or otherwise, taken by the clothing industry to ensure that outworkers are receiving their lawful entitlements. The council will be required also to include in its report a recommendation as to whether a mandatory code should be made and to suggest penalties for failure to comply with such a code.

The provisions contained in this bill are excellent and necessary. It has long been recognised that the textile, clothing and footwear industries in Australia have undergone major restructuring over the last 10 years. In an effort to remain competitive, outworking is now so prevalent that it is not just a characteristic of the industry; the entire industry is arguably structured around it. Sadly, however, outworkers themselves have not felt the benefits of modernisation and globalisation. Estimates show that somewhere between 30,000 and 50,000 people nationwide are involved in outworking in the garment industry on a full-time or part-time basis. Indeed, it is likely that the number of outworkers has increased considerably over the last decade, and continues to increase.

The Senate Economics References Committee noted that most outworkers are migrant women aged between 25 and 35 years who have young children at home. Most have poor English language skills and are unable to find work elsewhere. Elderly people and children in many outworkers' families assist with ancillary tasks. Outworkers experience a multitude of problems including low piece rates, which translate to low hourly rates, impossible deadlines for completion of work, late payment, underpayment, non-payment for completed work, rejection of work, unreimbursed expenses, physical and verbal harassment from intermediaries—blackmail, threats, coercion and bribes—substandard working environments, and worries associated with combining work with family responsibilities. These stresses are compounded by lack of English language skills and inadequate training.

In addition, occupational health and safety of outworkers is a neglected issue. Because outworkers are treated as contractors rather than employees, the ultimate cost of accidents and illness among them may be borne by the public sector. Naturally, some reputable companies try to ensure that outworkers are not exploited. However, it appears that the complex chain of garment production for the most part diminishes the payment of award wages for outworkers. Non-compliance with award wages and conditions is so widespread that generally it is considered to be the norm. A former industrial inspector stated:

> From 1979 until 1984 I was employed as an Industrial Inspector in the NSW Department of Industrial Relations. During that period I conducted several investigations into outwork in the clothing industry. My inquiries revealed widespread non-compliance by employers with their award, statutory leave and workers compensation obligations to their outworkers... I continue to be concerned at the widespread underpayment and general gross exploitation of outworkers in Australia.

One of the most common problems is late payment for completed work. While outworkers should be paid on completion of a job, often they are not paid until several weeks, or even months, later. This is completely unacceptable. During the time that workers wait for payment they face the dilemma of either repeatedly asking for payment, with the risk of getting their supplier offside and possibly receiving no more work, or keeping silent and risking not receiving payment at all. Poor rates of pay often mean that outworkers need to work long hours. Unrealistic deadlines mean that outworkers often sew for an excessive period of time each day and for many days without any substantial break. Long hours spent at machines result in both direct occupational health problems as well as indirect stresses caused by having to complete domestic chores as well.

Outworkers almost always perform work in environments that are significantly below standard, such as in a small room in a house or a small garage. The space is usually cramped and often has inadequate lighting, ventilation and heating. Noise and dust from cloth are perpetual problems. Often the pressure of tight deadlines, compounded by the need to care for children and cater to other family needs, results in considerable occupational stress for many outworkers. Most employers of outworkers do not provide any form of workers compensation insurance and do not take any responsibility for their occupational health and safety. This contributes to the incidence of workplace accidents due to poor and unsafe working conditions exacerbated by excessive hours of work.

The New South Wales Government's pay equity strategy report of 1999 agreed with these findings, noting that the work of outworkers in the clothing industry is undervalued, both within the award and because of systemic non-compliance with the award. The other day I had a meeting with some people who had been lobbying for quite some time to improve the conditions of outworkers. They pointed out that the average pay of outworkers is something like $3.60 an hour, compared with the award rate of $11.90 an hour. So, they are paid only a third of what they should be.

I am concerned that some jobs may go overseas or to Victoria or Queensland as a result of the introduction of this legislation. These people told me that mostly the runs are quite small and therefore are not the kinds of runs undertaken in Indonesia, Thailand, Malaysia or Vietnam. By and large those countries do runs on higher value clothes that are needed urgently, and it would not be worth their while selling them overseas. I know a clothing wholesaler-retailer who makes some clothes here as well as having some made in Thailand. The same thing applies there but on a much smaller scale.

There is a problem with Victoria not introducing its legislation in line with this legislation. Victoria may delay its legislation in the hope that that will drive some work down to Victoria, and New South Wales will lose some jobs. As I say, these jobs pay only about $3.60 an hour but some families depend almost entirely on that money, so I hope Victoria, Queensland and other States will fast-track their legislation so that jobs are not driven from New South Wales. I understand that Victoria is considering legislation at the present time but it will not be introduced until next year. As I say, we have to bear in mind that some people depend on these jobs for their livelihood. Given the importance of the proposed changes, it is imperative that the council's report be laid before both Houses of Parliament for their oversight, as well as being furnished to the Minister as currently provided for. In Committee I will move an amendment to this effect. I commend the bill to the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.24 p.m.]: The Australian Democrats support this bill. I congratulate the Government on its attempt to try to prevent exploitation of outworkers in the clothing and textile industries. The effects of the bill are twofold. The bill will establish the Ethical Clothing Trades Council, comprising seven people representing stakeholders in the clothing industry. The role of the council is to advise the Government on developments in the industry and the working conditions of outworkers, and to assist in drafting and developing codes of practice for operators in the industry. The Minister may also make mandatory codes of practice for outworkers after considering the report of the Ethical Clothing Trades Council.

An important aspect of the bill is that outworkers will now be covered under the provisions of section 51 of the Trade Practices Act and the eventual codes of practice will be enforceable as agreements entered into between outworkers and companies. Outworkers will now be defined in the Industrial Relations Act. They will also be able to claim access to entitlements that have been lawfully conferred on their class of worker by award, industrial relations Acts or other legislation. There are an estimated 329,000 outworkers in Australia, some earning as little as $1 an hour, who make clothing and footwear for Australian fashion warehouses. Unregulated working hours and occupational health and safety practices merely compound the fact that many homeworkers under contract are disadvantaged and do not receive an adequate income for their labour.

One issue that particularly concerns me is repetitive strain injury [RSI]. Although that has been renamed a number of times and is generally called cumulative muscle trauma or occupational overuse

syndrome, the problem has been severe, and the politics of naming it would make an interesting medical study. I used to read the medical literature on it thoroughly, but since I have been in Parliament I have not had any cases and I have not been reading the literature. Certainly, a great deal of nonsense was written about this condition. When I treated it quite extensively in the early 1980s, when it was very common among data process entry operators in Sydney Water—the Water Board, as it was called then—the model I had for it was like a tourniquet on a muscle. Muscles generally have contraction and relaxation phases, and blood flow occurs mainly during the relaxation phase. So, if one is running, the muscles contract for only half the time and receive more blood flow when they are relaxing.

The problem with RSI is that when the muscle is in a continual state of relative tension, the blood vessels never dilate and effectively it is like a tourniquet. Typically, the longer the arm is kept in a certain position, the more severe was the injury. The pain was always very localised in the short term and became quite diffuse in the long term. A great deal of nonsense was written about it. Certainly, the difficulty of naming this disease meant that people did not want to know about it. I believe that was because of the compensation aspects of it. I do not believe that has been well handled in occupational medicine generally.

RSI is still far more of a problem than people admit, and outworkers are certainly very vulnerable to it. I am not sure that this bill will be a panacea for it but certainly an adequate income for outworker's labour and decent conditions for them so they do not have to work extraordinary hours at their machines will be very important. I have visited the Bradfield factory, where, every hour, the workers used to get up and move to music to exercise their muscles. This relaxed them and let the blood flow into their muscles, which alleviated their problem, but this cannot happen if outworkers are unaware of such an initiative.

Since import tariffs on clothing, textiles and footwear were lowered in the mid-1990s, Australian-based clothing manufacturers have undergone drastic restructuring in order to compete against competitively priced imports from America, South-East Asia, the People's Republic of China and India, where the costs of production, largely due to cheap labour costs, have given developing countries a comparative advantage in exporting clothing to Australia. In response to this, Australian manufacturers had to outsource their production to keep labour costs down, and this aspect of economic globalisation has put pressure on our workers, who tend to be forced towards accepting Third World wages.

The Fair Wear group of New South Wales should be congratulated on its good work and long-term lobbying, which has borne fruit in this legislation. This bill is part of a global movement to advance the interests of outworkers employed in the clothing industry. The basis of the bill, which has been a long time coming, is the 1999 "Behind the Label" document, which was extremely important. The Australian Democrats support this bill and some of the foreshadowed amendments, which I shall deal with in Committee.

The Hon. IAN COHEN [8.31 p.m.]: I support the comments of my colleague Ms Lee Rhiannon. I am gratified to hear that a significant number of members of this House are positively inclined towards passing this bill. The Greens are pleased that this bill has come before the House; it is certainly not before time. I congratulate the Textile, Clothing and Footwear Union on its excellent work in representing vulnerable people in the community who are employed as outworkers. The Fair Wear campaign has been a significant campaign both domestically and internationally. That campaign and the concept of producing clothing from ethical sources, which is a significant campaign being undertaken by the union movement, are having implications globally. Those campaigns are timely, considering the massive profits being achieved by big companies like Nike and Reebok and smaller fashion houses in Australia.

The debate about the appalling wages for outworkers is interesting when one considers the huge mark-ups in the fashion industry generally and in high-quality fashion in particular. With the rapid turnover in the industry, fashion companies obviously need the essential component of outworkers slaving away in their little workshops and backyard garages under very difficult conditions. Outworkers make a bomb for the people at the other end of the line in the fashion industry. I am not talking about fashion companies suddenly trying to squeeze a profit out of the extra 50¢ an hour outworkers might receive for the clothing retailers at the other end of the line. It is an interesting and sobering thought that many of the clothes in retail shops in the cities, including the high fashion stores, come from backyard workshops and garages, often in Western Sydney.

Historically, outworkers have been exploited, and I am pleased that there is a move towards establishing a central registry that will enable clothing manufacturers to be put in touch with ethical suppliers. I had reason to contact the Fair Wear campaign people and the union movement when Reebok, of all organisations, contacted me about using my picture in a sporting campaign. It seemed like a wonderful offer at

the time. Honourable members may be aware of a picture of me hanging onto the nose of a warship—it created some infamy years ago. Reebok wanted to use that picture in a significant campaign featuring other sporting identities.

The Hon. Rick Colless: Is that sport?

The Hon. IAN COHEN: It is a sport of sorts; it is an athletic activity. In the picture I was not sitting at a desk; I was on a surfboard. Reebok wrote to me asking for permission to use my picture, which was duly refused. I then approached the Fair Wear campaign people to ask them about ethics. Reebok sent me information saying that it was much more ethical than its competitor Nike. Through the Fair Wear campaign people I found that, whilst Nike tended to thumb its nose internationally at campaigns such as the Fair Wear campaign and carry on regardless, Reebok was in the habit of acknowledging such campaigns but not acknowledging the conditions of outworkers in sweatshops overseas.

The Fair Wear campaign people and the unionists promptly cleared up my indecision. Reebok's advertising campaign had the potential to be a great advertisement for the Greens but in fact it would have been a disaster. I thank Fair Wear for their prompt action in giving me a significant amount of solid information about the exploits of both Nike and Reebok and their relationship to overseas outworkers and sweatshops in many countries throughout South-East Asia.

It is pleasing to see the action being taken and the structured advances, such as this bill, being made. At one stage people approached Nike and asked it to have "sweatshops" printed on Nike shoes for an advertising campaign. I am pleased that people are pushing hard for an ethics-based clothing industry and are moving away from young people being sucked into paying exorbitant prices for brand names. Exorbitant prices place a great strain on many people in the community, not only the outworkers affected but also the families chasing fashion house labels and paying exorbitant prices for products that do not warrant those prices. I am pleased also that the bill provides for bilingual inspectors with Chinese and Vietnamese language skills to assess operations and clamp down on inappropriate operators.

The Greens believe—as do I think most members of the House—that outworkers have a right to collective bargaining and the right to a living wage. We are talking about some 300,000 outworkers in Australia, mostly in New South Wales, working on rates like $2 an hour. The incidence of repetitive strain injury [RSI] among outworkers is high. I commend the Hon. Dr Arthur Chesterfield-Evans for his short but concise assessment of RSI problems, which was an eye-opener.

Moving towards accreditation and a labelling system is a significant step in the right direction. The No Sweatshop Label campaign, which accredits participating companies, is a fine example of a proactive and positive campaign. Similarly, the School Fair Wear campaign is positive. Earlier Ms Lee Rhiannon referred to surfing contests in Newcastle and the concept of a Fair Wear campaign for the surfing industry. I have been involved in the surfing industry for many years. Companies producing wetsuits and other clothing for surfers in international workshops must fall into line with the forward-thinking motives that have resulted in this legislation. Indeed, they need to lift their game in many respects.

It is quite clear that the majority of people working in these conditions are migrant women between the ages of 25 and 35. Many speak little English and many have to work in garages, yet they want to stay in the home environment to be around their children and to maintain their families. That is very important for them. It is unfortunate in an industry so widespread that non-compliance is the norm. I hope that this legislation will go some way towards fair rates of pay for these workers and a greater understanding by them of problems such as repetitive strain injury, including an appropriate exercise regime that will enable them to avoid such problems. As I said, many workers in this industry are mothers who are caring for young children. Is important that, as we move along in a campaign such as this, we do not overlook the needs of the multicultural community throughout New South Wales; and that we look at being able to maintain these people in their home environment, if that is what they require, while providing them with appropriate financial recompense.

Nevertheless, there are many instances in the north of New South Wales, where I come from, where these situations have evolved into cottage industries, which can involve a high standard of work for people who prefer to work from home. I hope that it will be possible for that to happen in Sydney also. We have to be careful when regulating outworkers that it does not force them to leave home to work in a more regulated factory environment. That would be a difficult move for many of them. Our priority should be to maintain their family situation. It should be our equal priority to ensure that they are not exploited in the process. The

Government is certainly moving in the right direction and it is satisfying to see that this issue is being addressed. I congratulate the Government and all parties involved in placing this legislation before the House. As Ms Lee Rhiannon said in her contribution, the Greens thoroughly support it.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [8.42 p.m.], in reply: Ending exploitation of outworkers in the clothing industry is a key policy objective of the New South Wales Government. The Government recognises that a purely enforcement-focused approach is not sufficient to improve outcomes for outworkers or for the industry as a whole. This was a mistake of the previous Coalition Government, which thought only in terms of enforcement. Hence, the Carr Government is taking a strategic, multifaceted approach to achieving its objective of eliminating exploitation. It involves implementing more sophisticated approaches to the improvement of levels of compliance in the industry.

By creating the Ethical Clothing Trades Council we will bring together representatives of retailers, manufacturers, unions and the community to work co-operatively in advancing and promoting existing self-regulatory mechanisms in the clothing industry. We will be funding supply chain management improvement projects in the clothing industry. This will identify and implement cost-saving and quality improvement measures that will lead to better outcomes for everyone in the chain. In particular, these will lead to better occupational health and safety, and industrial outcomes for outworkers. The strategy will recognise outworkers' skills, training them for better jobs within the clothing industry, and assisting them to identify opportunities and training needs for leaving the clothing industry.

Community support and development is required to ensure that outworkers can adequately access and successfully complete such programs, and the Government is providing funding for such activities. The Government contrasts this sophisticated and co-operative approach to improving outcomes for all participants in the clothing industry, with the outcomes achieved by the former Government with its "prosecute or perish" mentality. In 1993 the Department of Industrial Relations and the WorkCover Authority visited 178 premises and in 1994 a further 215 workplace investigations occurred. But, out of this seemingly large-scale effort, only three employers were subject to prosecution. Why would that be? Because parties go underground and those willing to give evidence vanish. Meanwhile, conditions in the clothing industry did not improve. No-one in the former Government, least of all its Industrial Relations Minister of the day, the Hon. Kerry Chikarovski, was looking at the wider issues.

No-one in that Government was looking at other ways of assisting outworkers, or other ways of improving outcomes for the industry as a whole. This ignorance of industrial relations has been displayed in the debate on this legislation. In the other place last week the shadow Attorney General and member for Gosford, Mr Chris Hartcher, a former shadow industrial relations Minister, used his contribution to this legislation to attack the clothing trades union. In that, he was off to a bad start. Mr Hartcher attacked clothing trades union officials who, in his words, "sit in their offices in Sussex Street". I would have thought anyone familiar with industrial relations would know that the clothing trade union is based in Campsie. It has been based there for many years, although I dare say that Mr Hartcher does not get to Campsie all that often.

The Hon. Michael Gallacher: More than you.

The Hon. JOHN DELLA BOSCA: I will bet he does not. Mr Hartcher compounded this rather unfortunate lack of Sydney geography with an even more bizarre claim. He described officials of the Textile, Clothing and Footwear Union as wearing "very flash clothing". With due respect to the officials so mentioned, I assure honourable members that clothing trades union officials are not distinguishable by or unique in their dress. Indeed, I would suggest that Mr Hartcher dresses in a far more, shall we say, fashionable way than the average trade union official. He probably has a better office and drives a flashier car. But perhaps he was mistaking the hard-working and dedicated union officials for other people he holds dear—namely, many employers dictated by profits at the expense of decent standards.

His employer friends are no doubt always dropping in on the honourable member for Gosford to hear the latest jokes and enjoy a laugh or two in his company, whilst reminding him to keep kicking the unions. Mr Hartcher and the Coalition have also made the absurd claim that the Government has not done anything for outworkers. I would like to set the record straight. After it was elected in 1995, the Carr Government took a fresh look at the clothing industry. It drew on the experience of the No Sweat campaign run by the United States of America Department of Labour under President Clinton's administration. It drew on the views of the Textile, Clothing and Footwear Union. It drew on the views of the church and community groups that are associated with the Fair Wear campaign.

The Carr Government also drew on the views of enlightened manufacturers who had had enough of being undercut by disreputable competitors who were avoiding reasonable, decent employment obligations. It drew on the views of retailers concerned about the image that they were selling goods that were not made ethically. And, it drew on the failure of the Coalition's strategy. That process resulted in the current broad-based strategy. In the meantime, however, the Government has undertaken or funded a number of important projects and activities that have already improved outcomes in the clothing industry.

The Government funded and co-managed an outworker education officer for the Textile, Clothing and Footwear Union in 1996-97. It contributed to the cost of producing an outworkers' diary in Chinese, Vietnamese and English in 1998. The diary provided information on the rights and entitlements of clothing outworkers and was a means by which outworkers could record details of their work to support any claims about underpayment they might make in future. The Government saw to the establishment in 1998 of a code of practice governing public sector procurement of textile, clothing and footwear items. New South Wales public sector agencies are required by the code of practice to procure such items only from ethical suppliers. A targeted inspection campaign began focusing on fashion houses and higher-level manufacturing operations.

That campaign resulted in successful prosecutions for 40 breaches of the Industrial Relations Act and relevant industry awards. The Government funded the Fair School Wear campaign, which encouraged school communities to demand that their suppliers implement ethical sourcing practices and disseminate the ethical clothing message to the broader community. The Government supported the development of the homeworkers code of practice by funding the expansion of the code's sewing time standards manual to include school uniform items and by partly funding the code's 2000-01 information campaign. It established the Multilingual Clothing Industry Unit, the bilingual inspector team, within the Department of Industrial Relations. In addition, the unit has engaged in a broad-based education and information campaign, including participation in community festivals and other activities.

The Government funded the program Asian Women at Work to employ a community worker to develop and support a Chinese outworker network. The ultimate aim is to encourage these outworkers to undertake skill recognition and other training courses to improve their prospects and employment outcomes. I have also taken this strategy to the Workplace Relations Ministerial Council and liaised with State governments in Australia to implement this strategy nationally. The Federal Minister, the Hon. Tony Abbott, indicated broad support for the general terms of the strategy when I reported this to other Ministers. I hope that this flows through to Commonwealth support not only for this legislative program but for other initiatives to end outworker exploitation.

I note the shadow Minister's concerns about New South Wales bearing the brunt of this strategy in isolation. That is why I raised this issue at the ministerial council. Perhaps he can assist me in encouraging his Federal colleague, the Hon. Tony Abbott, to follow his instincts and support the clothing outworker campaigns. The House has expressed general support for the Government's strategy in relation to clothing outworkers. I trust that this outline of the Carr Government's record dispels the absurd rhetoric of the Coalition that the plight of outworkers has been ignored by the Government. It is not a canard that the shadow Minister has repeated in this House. His colleague and, I believe, sometime friend—though I did dine out on the prospect that they were not so friendly any more, but it appears to be a rift that is now healed—in the other place was not nearly as well targeted nor as sensible in his remarks on this bill. The bill is a positive step in the process of addressing the challenges before us in relation to outworkers and in relation to the whole issue of an ethical chain of responsibility in labour relations and employment.

I conclude by acknowledging the tireless efforts of those involved in the development of the bill: first and foremost the Textile, Clothing and Footwear Union of Australia and its officers, the current secretary, Barry Tubner, the former secretary, Kevin Boyd—an old friend of mine of many years standing—and the union's chief advocate, who is in the gallery tonight, Mr Igor Nossar, to mention only a few. I acknowledge the hard work of Ms Debbie Carstens of Fair Wear and a range of her colleagues and their contribution and dedication through the public debate on these issues and, I assume, their ongoing support for initiatives to improve the lot of outworkers, especially in the clothing industry. I also acknowledge the hard work of the officers of the Department of Industrial Relations. They started working on this issue before I became the Minister for this portfolio. I am grateful for their flexibility. I acknowledge the hard work of my ministerial and departmental staff on this project and the legislation to date. I thank the House for its support and commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Part 1 agreed to.

Part 2

The Hon. RICHARD JONES [8.55 p.m.]: I move:

Page 7, clause 9. Insert after line 13:

(4) The Minister must, as soon as practicable after receiving the report, lay a copy of the report, or cause it to be laid, before both Houses of Parliament.

(5) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (4), the Minister must present copies of the report to the Clerk of the House of Parliament.

(6) A report presented to the Clerk of a House of Parliament:

(a) is taken on presentation, and for all purposes, to have been laid before the House of Parliament, and

(b) may be printed by authority of the Clerk of the House, and

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

(d) on the first sitting day of the House after receipt of the report by the Clerk, must be recorded:

(i) in the case of the Legislative Council in the Minutes of the Proceedings of the Legislative Council, or

(ii) in the case of the Legislative Assembly in the Votes and Proceedings of the Legislative Assembly.

The Ethical Trades Council is required to report to the Government after 12 months on action, whether voluntary or otherwise, taken by the clothing industry to ensure that outworkers are receiving their lawful entitlements. The council is also required to include in its report a recommendation as to whether a mandatory code should be made, and to suggest penalties for failure to comply with such a code. Given the multitude of concerns raised in relation to the condition of outworkers' working environments, their conditions and pay, if any, the occupational health and safety issues, and physical and verbal harassment, it is extremely important that the findings and recommendations of the council be made public. This amendment provides that the council's report be laid before both Houses of Parliament rather than simply furnished to the Minister, as is currently provided for.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [8.56 p.m.]: The amendment moved by the Hon. Richard Jones, with the exception of a couple of words, appears to be identical to the Opposition's foreshadowed amendment. The bill provides for quarterly reports from the new council to be provided to the Minister. The concern of the Opposition is that as the bill currently stands there would be no opportunity to scrutinise any reforms in the way of a mandatory code of practice that the Minister may introduce at the end of the 12-month period. The amendment is consistent with the Opposition's circulated amendment.

It is a significant step to assist the Parliament with ongoing scrutiny of the success or otherwise of the council as it considers the changes that have been referred to in the bill before moving towards the mandatory code. If the bill were to pass as it currently stands members in this place would receive no further information to determine the success or otherwise of the self-regulatory mechanisms until the expiration of the 12-month period. The amendment will ensure that the Minister tables reports to the Parliament. This Chamber will then have an ongoing role. If the mandatory code of practice is introduced at a later stage all members will then understand what occurred prior to its introduction.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [8.59 p.m.]: As I indicated to the Leader of the Opposition privately earlier, foreshadowed Opposition amendment No. 1 is acceptable to the Government, as is the amendment just moved by the Hon. Richard Jones. They are in similar terms and the Government does not object to either.

Amendment agreed to.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.00 p.m.]: I move Opposition amendment No. 2:

No. 2 Page 7. Insert after line 17:

11 Minister to make annual report to Parliament

(1) The Minister is to prepare an annual report for presentation to each House of Parliament containing details of:

(a) the operations of the Council during the year in monitoring the activities of clothing industry retailers and manufacturers in relation to their obligations under the mandatory code (if in force), and

(b) details of any prosecutions instituted against any such retailers or manufacturers following any such recommendations.

(2) It is sufficient compliance with this section if the annual report is included in the annual report for any Department for which the Minister is responsible prepared in accordance with the *Annual Reports (Departments) Act 1985* and the regulations under that Act.

The rationale of this amendment really follows on from the earlier amendment that was moved by the Hon. Richard Jones and agreed to. I draw the attention of honourable members to clause 8 (4) of the bill, which deals with quarterly reports:

> The Minister may waive the requirement that the Council make a quarterly report for any period specified by the Minister.

The amendment that was moved by the Hon. Richard Jones, and agreed to, states that the Minister will table in the House the reports that he or she receives from the council. All honourable members have agreed to that and those reports will be tabled. However, clause 8 states that the Minister may waive the requirement that the council make a quarterly report. We could find that in 12 months time the Minister may have successfully waived up to four quarterly reports and this Parliament would not have received anything during those 12 months. It may be that no quarterly reports would have been tabled, contrary to the amendment to which honourable members agreed a few minutes ago.

The amendment proposed by the Opposition is a safeguard to ensure that at the expiration of the 12-month period, if we find that the quarterly reports have been waived, the Minister will report back to the Parliament on the operations of the council. At least the Parliament will get something, and the Minister can report in two ways. The Opposition is not asking for the world: we are simply saying that the Minister can either table the report in the Parliament, or it will be sufficient compliance with the clause if the report is included in any annual report for any department for which the Minister is responsible. The Special Minister of State has the industrial relations portfolio. If the Minister decides that he does not want to table the council's annual report in Parliament, he can simply include the report in an annual report of one of the departments for which he is responsible. The Opposition is not asking for too much. All we are saying is that if the quarterly reports are waived, which is what the legislation provides for, at least at the end of a 12-month period the Parliament will have something, either in written form as an annual report or as presented by the Minister to the Parliament in verbal or written form. This amendment represents a safeguard.

Ms LEE RHIANNON [9.03 p.m.]: Honourable members have heard the Leader of the Opposition in this place explaining his rationale for the amendment. However, the rationale behind the amendment is an attempt to stall the legislation. The Greens believe it is absolutely unnecessary to require the tripartite council to report on the operation of any mandatory code. That would tie up the legislation in a way that could make it more difficult to proceed. The legislation provides many checks and balances. The basis of the legislation is review at many different stages, as the honourable member who preceded me, the Leader of the Opposition, is aware. That is how this legislation has been constructed—to provide all those checks and balances. The Greens see this amendment as an attempt to bring a spoiling factor into an important piece of legislation. The Greens will not support the amendment.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.04 p.m.]: I am at a total loss to understand how Ms Lee Rhiannon has arrived at the conclusion that the amendment in any way stops the passage of the legislation. All that the amendment says is that the Parliament will receive a report at the end of 12 months. The Minister may wish to proceed to the mandatory code of conduct, which is what the legislation allows him to do, and the amendment does not state that nothing can proceed until the annual report is tabled or until the Parliament has had an opportunity to debate it. The amendment simply states that at the end of a 12-

month period the Parliament will have the ability to scrutinise what has occurred over the preceding 12 months to ensure that honourable members know what is occurring in the industry. I do not think its purport is as significant as Ms Lee Rhiannon is trying to make out.

Ms LEE RHIANNON [9.05 p.m.]: I just want to check that it is understood that I in no way said that the amendment would stop the legislation going ahead. I was talking about its effectiveness, and I think that that was quite clear.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.05 p.m.]: Can Ms Lee Rhiannon explain to me how it would stop its effectiveness?

Ms LEE RHIANNON [9.05 p.m.]: Because it is just one more bar. The whole basis of this legislation, as the Leader of the Opposition knows, is reviews and checks, and they are in place. The Leader of the Opposition is out to be a spoiler and he knows that. He has to deliver for his constituency and that is what he is trying to do.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.06 p.m.]: Can I have it put clearly on the record that the Greens have now become the advocates for secrecy in the Parliament? They do not want the House to be a House of review. They do not want this Chamber to have an opportunity to review anything that the Government does. The Greens want a big tarpaulin put over the top so that no-one can view what is happening. Honourable members could hear more hypocrisy from Ms Lee Rhiannon in the future, and I ask the honourable member to at least demonstrate some semblance of consistency or at least the basis upon which she puts her argument. But for the honourable member to make a hypothetical interpretation of how she feels the Opposition stands on an issue really flies in the face of everything that she has said in the past about openness and accountability. All that the amendment seeks to do is to say that at the end of the 12-month period this Parliament will receive a report on the effectiveness of the self-regulatory scheme.

The amendment asks for nothing more and nothing less. It is consistent with what was agreed to earlier in relation to quarterly reports. The amendment recognises that the legislation states—and I point out to the Hon. Lee Rhiannon that it is not my legislation but the Government's legislation—that the Minister may waive the requirement that the council make a quarterly report for any period specified by the Minister. Five minutes ago the honourable member was more than happy to agree that there should be openness and accountability and that the Minister should table any report from the council on its quarterly operational conduct. Now that it has been pointed out to her that the Minister has the ability to waive those quarterly reports, she says, "Oh no, we don't want any accountability." I do not know what is going on over on the opposite side of the Chamber, but it is a matter of real concern.

Reverend the Hon. FRED NILE [9.08 p.m.]: The Christian Democratic Party supports this amendment, which seems to be most reasonable. In fact, it seems to deal with what is required of other Ministers by the Parliament. We are always requesting an annual report. One would think that the Minister would prepare a report. All we want to do is make sure that the report is presented to Parliament. The Minister will probably be reporting to somewhere—probably to Cabinet—so there has to be a report. All we are saying is that that report should be presented to each House of Parliament. The amendment seems quite reasonable.

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.]: The Government does not support Coalition amendment No. 2. There are a number of important reasons for the reservation of the Government in respect to this particular amendment. First, the amendment confuses the role of the Ethical Clothing Trades Council with that of the Department of Industrial Relations. The council is not able to investigate specific breaches of the code. More importantly, the amendment reflects the very simplistic approach of the Opposition to problems in the clothing industry—the prosecute or perish mentality that I mentioned in my reply.

For example, in 1993 the Department of Industrial Relations and WorkCover jointly visited 178 premises, and in 1994 a further 215 workplace investigations occurred. As I said in my second reading speech, only three employers were subject to prosecution. And why? Because, on the whole, the parties that engage in practices that this legislation seeks to deal with go underground and those that would otherwise be in a position to give evidence are often intimidated or are not in a position to do so. The Department of Industrial Relations will include all of the activities associated with the implementation of the Industrial Relations (Ethical Clothing Trades) Act in its annual report as it is required to do under the Annual Reports (Departments) Act. That

reporting will provide Parliament and the public with a complete review of the effectiveness or otherwise of all the strategies that are implemented. In other words, to make it absolutely clear, without the need for that specific provision I am prepared to place on record a commitment by the Government that the department will include the details of the monitoring of compliance in respect to the mandatory code, and any prosecutions arising, in its annual reports.

Reverend the Hon. FRED NILE [9.10 p.m.]: The Opposition seems to be troubled with the provision in clause 8, which states:

> (4) The Minister may waive the requirement that the Council make a quarterly report for any period specified by the Minister.

Will the Minister give an assurance that if one quarterly report were waived, all consecutive quarterly reports would not be waived in any one year?

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) [9.11 p.m.]: I cannot think of any reason why the Government would be likely to waive more than one consecutive report. I suppose I am in a position to give the commitment requested by Reverend the Hon. Fred Nile. I repeat the even stronger commitment that I gave in summary to the overall commentary of the Leader of the Opposition: I am quite happy to place on record that all the compliance activities covered by this bill will be subject to report through the annual reporting provisions of the Department of Industrial Relations, which will be the compliance authority. The Ethical Clothing Trades Council will not carry out any prosecutions or investigations; it is intended that that body will develop a code of practice. During the first 12 months that will be a voluntary code, and everyone is anticipating the likelihood of a mandatory code arising out of this legislation.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.12 p.m.]: Minister, will the annual report of the Department of Industrial Relations contain a section that deals with the 12-month results of the self-regulatory mechanism, as spelt out in this legislation? We are looking for a process by which we can evaluate the success or otherwise of this self-regulatory mechanism.

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) [9.13 p.m.]: The short answer is yes. The Government is in a position to give a commitment in general terms, as long as the Leader of the Opposition understands that both of those requirements are provided for in the department's normal reporting obligations.

Amendment negatived.

Part 2 as amended agreed to.

Part 3

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.14 p.m.]: I move Opposition amendment No. 3:

> No. 3 Page 9, clause 12. Insert after line 15:
>
> (7) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to an order under this section in the same way as those sections apply to statutory rules.

This amendment is yet another safeguard that I am sure the Hon. Lee Rhiannon would be more than happy to support, as it ensures some consistency with regard to the approach that she has taken to governance, and that I expect she will take in the future. This amendment relates to the making of a mandatory code of practice. It is extremely important—if we are going to go down the path of mandatory mechanisms to ensure compliance in the ethical clothing trade or in other areas of industrial reform—that the Parliament have an opportunity to scrutinise anything put forward in a mandatory form. We are being asked to sign off on something that may or may not occur 12 months or more from now. We are being asked to sign off on 12 months of inquiry, the result of which we do not yet know.

The Opposition's amendment provides that if in 12 months time or more the Minister seeks to introduce a mandatory code of practice following the recommendations by the council, it should be in such a form that this

Chamber has an opportunity to consider and debate it, in the same way that we deal with many other matters that are determined by way of regulation. The amendment makes it a disallowable object, consistent with sections 40 and 41 of the Interpretation Act 1987. Most certainly those two sections are often raised as a safeguard to ensure some level of probity by Parliament. The Opposition's amendments are consistent with that. To assist the Hon. Lee Rhiannon, the amendment does not in anyway prevent safeguards to protect outworkers from being enacted; it is a security to ensure that if the Government gets it wrong in 12 months time or longer with regard to a mandatory code of practice, Parliament has an opportunity to reconsider the matter.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.14 p.m.]: The Government does not support Opposition amendment No. 3. There are numerous important differences between the making of a mandatory code and the usual procedure for making a statutory rule. A mandatory code is not a foregone conclusion, it must be justified and it will be made only if the Minister is convinced either that the voluntary self-regulatory mechanisms are not delivering to outworkers their lawful entitlements, or that persons in the clothing trade and clothing industry are not negotiating improvements or extensions to the voluntary mechanisms in good faith.

A mandatory code must be justified on solid grounds. In forming a conclusion the Minister is required to take account of the 12 monthly report of the Ethical Clothing Trades Council, based on its functioning, particularly monitoring and advising, over that period. The content of the code will be based on recommendations from all facets of the industry. The council—comprising retailer, manufacturer, union and consumer members—is required to make recommendations on the content of, and suggested penalties for, the code.

The code will be required to satisfy the public benefit test under the national competition principles agreement so that it may have the benefit of the exemption of the Trade Practices Act requirements set out in clause 17 of the bill. All those steps are tailored to ensure that the code is a workable code of practice and that it can continue to have the support of industry. Additional scrutiny by those with a lesser understanding of the industry is counter-productive, with all due respect to the Leader of the Opposition.

The Hon. RICHARD JONES [9.19 p.m.]: I do not understand why it is unreasonable to have this code as a disallowable instrument, so that this House can perform its function as a House of review. If the mandatory code is deemed to be reasonable, the House would not disallow it. However, if it is deemed to be unreasonable by a sector or sectors in the industry or even by the union, this House should be able to perform its task as a House of review.

Ms LEE RHIANNON [9.20 p.m.]: This mischievous amendment is another example of the Coalition saying one thing but doing another. The Government has not got it wrong on the mandatory code of practice. The Opposition had plenty of time during the second reading debate to detail in what respect it claims the Government had got it wrong. However, it did not come up with any clear arguments that the mandatory code was not necessary. We simply must do the right thing by outworkers, and this legislation goes part of the way towards that. By putting forward this amendment the Opposition knows exactly what it is doing. It is a regulation, and the Opposition could very soon moved a disallowance motion in relation to it. That is the game that the Opposition is playing here, and it is very wrong. Members opposite would not have a clue about the conditions under which outworkers are forced to work. If they were to imagine what it is like sitting in a garage, working in appalling heat, and being paid a few dollars a day, perhaps they could consider withdrawing the amendment, which is a total spoiler of this important legislation.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.21 p.m.]: The remarks of Ms Lee Rhiannon are absolutely consistent with the fallacious position she took in relation to another matter that this place debated last week. She took great delight in misrepresenting exactly what occurred at that time, and once again she misrepresents the position of the Opposition. In future it would not be a bad idea if Ms Lee Rhiannon reads the legislation before she comes into the Chamber and makes one of her strong statements. It would be unique, it would be different, and she should consider doing so. If she read the legislation she would see that clause 13, which relates to obligations under the mandatory code, provides:

> An employer or other person engaged in the clothing industry, or a sector of the clothing industry, specified or described in the mandatory code who fails, without reasonable excuse, to adopt any standard of conduct or practice set out in that code…

We do not know what the obligations under the mandatory code will be in 12 months time. Perhaps Ms Lee Rhiannon has a crystal ball and can look into the future. The honourable member is happy to criticise the

Opposition, but the legislation contains significant holes that are yet to be filled in and those holes will not be filled in for at least another 12 months. The Opposition simply says that to protect everyone in the industry and to ensure consistency in the council's findings, Parliament should have an opportunity to consider the standard of conduct or practice set out in the mandatory code. That is fairly straightforward. The amendment will ensure that in 12 months time we have an opportunity to ensure that what the Government lays down in the standard of conduct or practice is in the best interests of everyone in the industry.

Reverend the Hon. FRED NILE [9.23 p.m.]: I seek clarification on two points. First, the Hon. Richard Jones said that the House has the right to disallow the regulation. However, the regulation cannot be disallowed unless the majority of the Chamber agrees to that course; the Opposition cannot do it on its own. Second, clause 12 (2) provides that the code of practice must be made by order published in the *Government Gazette*. Normally, items in the *Government Gazette* can be disallowed by the Legislative Council. Does the Hon. Richard Jones suggest we should make an exception, that some items appearing in the *Government Gazette* in the future should not be subject to disallowance even though questions about them may be raised?

The heading to clause 12 is "Making of mandatory code of practice", and I would have thought that, to be consistent, wherever the term "code of practice" appears in legislation the word "mandatory" should appear in front of it. The legislation gives the Minister power to make a code of practice. I simply point out that the heading contains the word "mandatory", but the text of the clause does not. When the mandatory code of practice is recommended by the council, does the council have to be unanimous in its decision? How does one establish the will of the council? Is it a majority vote of the seven part-time members? If there were disagreement between council members, is it then a decision, for example, of half of the members? Obviously, it would be ideal if all members of the council could be in agreement. The whole point of the council is to establish a code that is acceptable to both the unions and the employers.

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) [9.26 p.m.]: The general answer to the last point made by Reverend the Hon. Fred Nile is that I would anticipate that a general consensus would be reached between the various parties. That is the whole point of the framework that this legislation establishes. When it comes to the possibility of an inability to reach a consensus, I suppose the blind reality is that there is a ministerial call on the formation of a code of practice. With regard to the honourable member's point that the heading to clause 12 contains the word "mandatory" but the text of the clause simply refers to "a code of practice", I have to be frank with the Committee and say that that is a drafting issue and I am not able to provide an explanation for it. However, I will confer with my advisers and provide an explanation in due course, if possible.

The Hon. RICHARD JONES [9.27 p.m.]: I again point out that we are passing legislation that imposes a fine of 100 penalty points, which is currently $11,000. Yet this Committee has no idea what offenders will be fined for. If we are to pass legislation that fines individuals, groups or organisations $10,000 or $11,000, we should be able to oversight what they are being fined for. I therefore believe that it is reasonable that this be a disallowable instrument, so that this Chamber can have some overview of it. That is the role of this Chamber. There should not be paranoia about the fact that we should be able to do this. I believe it is this Chamber's duty to oversight legislation, especially when people are being fined $10,000.

Ms LEE RHIANNON [9.28 p.m.]: I urge members to think carefully about this. If we make this a disallowable instrument, it will then become a mechanism for getting rid of the mandatory code, not replacing it. People who vote for this amendment are crippling the legislation. The Hon. Richard Jones said that we would not know what people are being fined for.

The Hon. Michael Egan: He's a good man, nevertheless.

Ms LEE RHIANNON: Not on this issue. The Hon. Richard Jones said we would not know what people are being fined for. We would know what they are being fined for. It is clear.

The Hon. Richard Jones: What? Tell us.

Ms LEE RHIANNON: When the various cases come forward, the information will be there. The Hon. Richard Jones needs to remember that if he votes for this amendment he will be knocking out the essence of this legislation. He will not be replacing the mandatory code; he will be getting rid of it and crippling the legislation. That would be an absolute tragedy.

The Hon. RICHARD JONES [9.28 p.m.]: That is the same logic used last week when it was suggested that we were voting ourselves a $62,000 wage increase. That was absolute rubbish as well. We have no idea what people will be fined for. The Legislative Council is a House of review and we should defend its oversight role. We should not allow this bill to be passed without knowing what we are voting for—and that is what we are doing. If we leave the provision as it stands, we do not know what we are voting for because there is no mandatory code in existence. That may not be the case in 12 months time, but we should have that oversight role.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.29 p.m.]: I would like to reiterate one point: The mere fact that this regulation may be disallowed does not knock the amendment out. Reverend the Hon. Fred Nile made that observation. If the Opposition believes that something is unworkable or unfair, it would have to prove its argument on another day at least 12 months into the future. However, for the time being this amendment at least provides everybody with a fair chance to argue the point. Knocking the amendment out, as the Hon. Lee Rhiannon suggests, prevents Parliament from ever scrutinising the issue again.

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) [9.30 p.m.]: With due respect, the Leader of the Opposition is becoming a little melodramatic. As I said with respect to previous amendments, there is no attempt here to be anything other than absolutely transparent. The normal reporting functions of the Department of Industrial Relations will allow Parliament to have a full and transparent look at the way the Ethical Clothing Trades Council goes about its work. The prosecution powers of the department and the compliance measures it has in place are all taken literally as read. The Leader of the Opposition should examine the way in which he is now extending the argument.

I need to place a number of critical points before the Committee because I do not wish anyone to be left in any doubt. Part 3 of the bill provides for the council to resort to a majority vote if required. The chairperson will play a significant and responsible role. In a nutshell, the Committee must consider whether it wants the mandatory code, which will be an instrument of industry, to improve the way in which the outworker problem is dealt with. We will need to place bad practice on the table and force behavioural and cultural change. It has been my experience, although I am not much of a negotiator and do not know a great deal about the politics, that people negotiate in good faith when they believe they are negotiating at a point of last resort.

The Hon. Michael Egan: You just told a fib.

The Hon. JOHN DELLA BOSCA: I did not. I do know this much: Retailers, manufacturers and unions need to negotiate at a point of last resort so that they all believe they are developing a practice and a cultural framework for the clothing industry that will be appropriate and based on practicalities. They must also believe that they will not be able to second-guess that practice and framework or do a second deal through some exercise in this Parliament or in any other forum. They must work out what is possible, ethical and productive in their own industry.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 16

Mr Colless	Mr M. I. Jones	Mr Ryan
Mrs Forsythe	Mr R. S. L. Jones	Mr Samios
Mr Gallacher	Mrs Nile	
Miss Gardiner	Reverend Nile	*Tellers,*
Mr Gay	Mr Pearce	Mr Jobling
Mr Harwin	Dr Pezzutti	Mr Moppett

Noes, 21

Mr Breen	Mr Egan	Mr Tsang
Ms Burnswoods	Mr Hatzistergos	Mr West
Dr Chesterfield-Evans	Mr Kelly	Dr Wong
Mr Cohen	Mr Macdonald	
Mr Corbett	Mr Obeid	
Mr Costa	Ms Rhiannon	*Tellers,*
Mr Della Bosca	Mrs Sham-Ho	Ms Fazio
Mr Dyer	Ms Tebbutt	Mr Primrose

Pair

Mr Lynn Dr Burgmann

Question resolved in the negative.

Amendment negatived.

Part 3 agreed to.

Part 4 agreed to.

Schedules 1 and 2 agreed to.

Title agreed to.

Bill reported from Committee with an amendment and passed through remaining stages.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (No 2)

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [9.44 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Statute Law (Miscellaneous Provisions) Bill (No 2) continues the well-established statute law revision program that is recognised by all members as a cost-effective and efficient method for dealing with amendments of the kind included in the bill. The form of the bill is similar to that of previous bills in the statute law revision program. Schedule 1 contains policy changes of a minor and non-controversial nature that the minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending bill. The schedule contains amendments to 28 Acts. I will mention some of them to give honourable members an indication of the kind of amendments that are included in the schedule.

Schedule 1 amends the Protected Disclosures Act 1994 so as to extend the protection of that Act to complaints made under the Local Government Act 1993 that show, or tend to show, that a council or an officer of a council has seriously and substantially wasted local government money. A related amendment to the Local Government Act 1993 provides for complaints under that Act to be made to the Director-General of the Department of Local Government. A further related amendment to the Defamation Act 1974 provides an immunity from actions for defamation in respect of the publication of a complaint concerning serious and substantial waste of local government money if the publication is for the purposes of investigating the complaint.

Schedule 1 also makes other amendments to the Protected Disclosures Act 1994. Most of those are consequential on the amendment concerning complaints about waste of local government money. However, an unrelated amendment extends from 6 months to 2 years the time within which proceedings may be brought for the offence of taking reprisal action against a person who has made a protected disclosure. Schedule 1 also makes a number of amendments to the Home Building Act 1989. Three of those amendments clarify the operation of sections relating to building contracts. The amendments ensure that those sections do not have the unintended effect of rendering a building contract wholly unenforceable at the suit of the builder merely because of the builder's very minor contravention of certain provisions of the Act. Another amendment inserts matter inadvertently omitted from a new section setting out the jurisdiction of the Fair Trading Tribunal in relation to building claims. A final amendment is made in connection with the design of legislation. Most amendments of that kind are made in schedule 3 to the bill. I will say a little more about that schedule later.

Schedule 1 also amends the Geographical Names Act 1966. Among other things, the amendments increase the number of members of the Geographical Names Board from eight to nine. The additional member is to be a nominee of the chairperson of the Community Relations Commission. The Building and Construction Industry Long Service Payments Act 1986 is also amended by schedule 1. The Act provides for the payment of a levy in respect of the erection of a building. At present, the levy is payable by the person who obtains the relevant development consent for the erection of the building or, if development consent is not required, by the person for whom the building is being erected. The amendments made by schedule 1 provide that, if a construction certificate is required for the erection of the building, the levy is to be paid by the person to whom the construction certificate is issued. Other amendments to the Act make related amendments. They also correct a reference to a council, update references to a particular body and correct a cross-reference.

The last schedule 1 amendments that I will mention are the amendments to the Companion Animals Act 1998. That Act is amended so as to remove the requirement that cats and dogs registered under the Act wear registration tags. There is no longer

any need for registration tags because all the information on the tags is also contained in the microchip that must be implanted in each cat and dog once it reaches the age of 12 weeks. However, each cat and dog must continue to wear a name tag showing its name and the address or telephone number of its owner. Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion in the bill. Examples of amendments in schedule 2 are those arising out of the enactment of other legislation, those updating references to the names of bodies and offices and those correcting numbering.

Schedule 3 makes a number of amendments to facilitate the implementation of the standard generalised markup language [SGML] by the Parliamentary Counsel's office, which is responsible for the compilation and maintenance of the New South Wales legislation database. The new system will improve the portability and accessibility of legislative data. Structural features of current legislation that are incompatible with the proposed system are to be removed. Schedule 4 transfers into the relevant principal Act a number of savings, transitional and other provisions of ongoing effect contained in certain amending Acts. The removal of those provisions permits the repeal, by schedule 5, of the amending Acts, since their other provisions either are spent or have been incorporated into reprints or electronic versions of the principal Act. Schedule 5 repeals a number of Acts. The schedule repeals amending Acts enacted in 2000 or earlier that contain no substantive provisions that need to be retained. The schedule also repeals amending Acts where the reprints of relevant principal Acts incorporate the amendments made by those Acts and where the ongoing savings, transitional or other provisions of the amending Acts are being transferred, by schedule 4, to the principal Acts. The Acts that were amended by the Acts being repealed are up-to-date on the legislation database maintained by the Parliamentary Counsel's office and are available electronically.

Schedule 6 contains provisions dealing with the effect of amendments on amending provisions, savings clauses for the repealed Acts, the revocation of the repeal of an environmental planning instrument in so far as it relates to certain land and a power to make regulations for savings and transitional matters, if necessary. The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts concerned. Rather than repeat the information contained in those notes, I invite honourable members to examine the various amendments and accompanying explanatory material and, if any concern or need for clarification arises, to approach me regarding the matter. If necessary, I will arrange for government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill. I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.44 p.m.]: I lead for the Coalition in debate on the Statute Law (Miscellaneous Provisions) Bill (No 2). Generally, this type of bill—an omnibus bill that encompasses a number of amendments to Acts that are usually of a machinery nature—is brought before the House a couple of times each year. This bill is fairly typical of such omnibus legislation. Rather than give an overview of the many changes in the bill I will address only those that fall within my shadow portfolios of Industrial Relations and Fair Trading. The first amendment to the Building and Construction Industry Long Service Payments Act simply changes all references to the Employers' Federation to that of its new name—Employers First. The second amendment will make changes for the party responsible for paying the long service levy in the building construction industry. Currently the person liable to pay the long service levy is the person who obtains the relevant development consent for the erection of the building or, where no development consent is required, the person for whom the building is being erected. This bill will make liable the person to whom the construction certificate is issued, if such a certificate is required.

The Co-operatives Act will be amended to stipulate that loans made by members to co-operatives prior to changes to the Act in December 1997 will be set at the rate of interest payable under that loan agreement. Those loans will not be affected by the restriction on interest rates that was implemented in December 1997. In practice, that means that if members were required to make a loan to a co-operative prior to these changes to the Act, they would be paid the rate of interest to which they originally agreed. The changes being made to the Home Building Act are best described as "oops amendments". It would appear that the former Minister for Fair Trading and his department failed to include a number of provisions in the recently considered amending bill. This bill addresses those embarrassing problems. Principally, it will ensure that if a building contractor engages in unlicensed contracting, or if a contract is not in writing or is unclear, the builder or consultant will not be entitled to damages or to enforce any remedy for breach of contract. It will clarify the position to ensure that a building contract is not rendered wholly unenforceable because of a minor contravention by the builder.

The changes to the Occupational Health and Safety Act will remove a duplication of investigative and enforcement provisions with respect to coal preparation plants. Currently, with respect to occupational health and safety a mine and a coal preparation plant are subject to regulation—an unnecessary complication for these plants. Last but not least, the Travel Agents Act will now make optional the imposition of a fee if a travel agent fails to pay an annual fee or lodge a statement that may ultimately lead to the cancellation of its licence. The Opposition does not oppose the Statute Law (Miscellaneous Provisions) Bill (No 2).

The Hon. RICHARD JONES [9.48 p.m.]: My office has consulted extensively on the Statute Law (Miscellaneous Provisions) Bill (No 2). No problems have been raised by anybody about the legislation. I support the legislation as it stands.

The Hon. IAN COHEN [9.49 p.m.]: Similarly, I put on the record that my office regards this legislation as a convention. Such amendments are generally of a minor and constructive nature. The Greens have no objection to the Statute Law (Miscellaneous Provisions) Bill (No 2) and are quite happy to support it.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [9.49 p.m.], in reply: I thank honourable members for their support for the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

GRAIN MARKETING AMENDMENT BILL

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council), on behalf of the Hon. John Della Bosca [9.50 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

By way of background to the introduction of this bill I would like to first, briefly, outline some of the history leading up to the formation of the NSW Grains Board, and its performance over the years since its establishment in 1991.

Members will recall that, prior to the establishment of the NSW Grains Board in 1991, there were four separate smaller boards dealing with the various individual coarse grains and oilseeds: the Barley Marketing Board, the Grain Sorghum Marketing Board, the Oats Marketing Board, and the Oilseeds Marketing Board.

All but one of these Boards got into financial difficulties, with only the Barley Marketing Board operating successfully at the time the NSW Grains Board was formed.

The Grain Sorghum Marketing Board was the first to get into trouble, way back in 1983. The Board forward sold a significant portion of the crop in 1982 and 1983, and then, with the severe drought, was unable to acquire sufficient grain at acceptable prices to meet its commitments, ending up with a large debt.

The Board was put into administration, and a Scheme of Arrangement established, funded by a levy of $3.80 per tonne on grain sorghum production over the next seven years.

In 1989 the Oilseeds Marketing Board fell over.

It had paid growers cash prices for the 1988 crop, which turned out to be well in excess of subsequent market realisations, and when prices fell, it owed its bankers some $5 million.

Again, a Scheme of Arrangement was set up with a levy on production over the following seven years, this time at $9 per tonne.

Lastly, in 1990, the Oats Marketing Board collapsed. It had sold some 70% of its 1989 crop intake to the Victorian Oat Pool (VOP), and borrowed from its bankers to pay growers in full.

When the VOP collapsed and couldn't pay, the Board was left owing its Bankers more than $3 million.

Because growers had been paid in full, no Scheme of Arrangement was established, and the Board's Bank was left with the loss.

Three different Boards, three different types of loss, three failures.

You would have thought that the Government of the day would have been more careful in establishing a new, single combined Grains Marketing Board, to ensure that such disasters could not recur.

Because of these three failures, there was an inquiry and review of coarse grains marketing in NSW, undertaken by the Department of Agriculture, in consultation with the industry.

That inquiry was a forerunner to the kind of National Competition Policy inquiries we have many of today, and its conclusions were along similar lines.

The key findings were that vesting powers should be removed, or at least strongly constrained, and that levies should only be collected for the purpose of funding industry services functions of a public good nature.

Risk management and operating strategies should be overhauled, and if boards were to be continued, board members should be chosen on the basis of appropriate knowledge, skills and experience.

A single, amalgamated organisation was proposed, but it was recommended that growers be given the choice to vote on a range of future options for the coarse grains and oilseeds industries.

In the event the Government of the day, in consultation with the NSW Farmers' Association, developed a proposal for a single amalgamated coarse grains and oilseeds board, to be known as the NSW Grains Board, with a poll held amongst all growers of coarse grains and oilseeds to determine which grains should come under its control, and the degree of that control.

Growers supported this proposal, with strong support for a single desk for both domestic and export malting barley, and support, though not as strong, for export controls on the other grains, but a free local market, and a maximum levy of $1.50 per tonne for both industry services and marketing support purposes.

A key element of the legislation establishing the Board, as pointed out by the previous Minister for Agriculture during the Second Reading Debate, was that responsibility for the marketing, administration and management of coarse grains and oilseeds was being given to the State's growers.

The real challenge, according to the then Minister, was for producers and growers to make the legislation work. The hallmark of the legislation was that it provided a legislative framework for a marketing authority to operate in a commercial manner and to continue to be financially self-supporting.

As the Minister said, "The Board will be constituted as a body corporate and will not for any purpose represent the Crown. Such a provision is meant to reinforce the fact that a statutory marketing authority is a body established at the request of producers to act on their behalf, and is not an initiative of government".

The NSW Grains Board inherited $3.9 million of assets from the previous Barley Marketing Board, but not the debts of the other three boards, and began operations on 1 August 1991.

During its first year the Board made an operating surplus of $1.044 million, but abnormal losses relating to redundancies of previous board staff and stock losses resulted in an overall loss of $124,000.

The Board's second year of operations was much more successful, resulting in a surplus of $6.8 million.

This was followed by a $2.2 million surplus in 1994, with the Board's equity (net assets) having risen to $13 million by August 1994.

In 1995, the Board experienced lower throughput, and coupled with inter-year pool transfers, suffered a loss after abnormals of $2.8 million.

This was more than made up in 1996, with an overall surplus of $7.7 million, raising the Board's equity to $17.6 million.

Two further profitable years in 1997 and 1998 ($3.1 million, and a bit under $1 million), along with an asset revaluation, resulted in accumulated funds reaching $22.1 million by 31 August 1998.

The Board's final year of declared surpluses was in 1998/99, which of course, has been under considerable scrutiny by ICAC.

With a record of successful trading, and a growth in accumulated funds over seven years from $3.9 million to $22.1 million (and ultimately to $24.6 million) the Board appeared to have it all in order.

The Board and its operations had been scrutinised during 1998 and 1999 by the NCP Review, who were asked to determine whether, and to what extent, the Board and its powers provided a net public benefit.

The NCP Review found that the Board's barley export powers did produce net public benefits, at least as far as exports to Japan and China were concerned, and these were two of the Board's major markets.

The export powers over the Board's other crops were found to have neither a net benefit nor net cost, and in accordance with NCP principles the Review recommended that these powers should be phased out.

The Board's controls over the domestic malting barley market were found to impose a modest net public cost, and were therefore also recommended to be phased out.

The NCP Report was presented to me in July 1999.

I then undertook a considerable period of consultation with the industry.

Much debate was occurring within the industry over the future of the Board and its powers.

Large elements of the NSW Farmers' Association wanted the Board retained, with all its current powers.

The Prime Wheat Association, as it was then known, was seeking to have the Board's powers restricted only to barley exports.

The Board itself was pursuing a process of corporatisation, so that its equity could be assigned to growers, and the Board privatised, along similar lines to the Wheat Board.

In this context, the Board and its advisers from the Commonwealth Bank, came to see me in October 1999 to outline their proposals, and to urge the retention of the Board's powers, and its right to impose Authorised Buyer Fees for as long as possible, and certainly long enough to allow the Board's equity to be further built up from $25 million to around $60 million, the figure suggested as necessary by the Board's advisers, to be sufficiently viable to operate in a competitive, or non-regulated, environment.

The Government was giving detailed consideration to all these proposals, and how best to accommodate the Board's needs, the industry's various views, the need to progress the corporatisation of the Board, and to make a final determination on the outcome of the Review.

Matters were about to be finally considered by Cabinet, when, on Friday July 28 2000, the Australian Financial Review revealed in an article that the Board had suffered losses of some $12 million, mainly through bad debts from Water Wheel and Seedex.

This was the first inkling that anyone outside the Board had had, that the Board was in financial trouble.

On 8 August, the Director-General of NSW Agriculture reported to me this development, providing me with a preliminary report from the Board, and advising that a more detailed report from PriceWaterhouseCoopers, the Board's internal auditors, and management accounting consultants had been requested, and were expected by month's end.

The preliminary report from the Board, dated 4 August 2000, advised that a loss of up to $35 million was anticipated for the year ended 31 August 2000, leading to a net deficiency in the Board's assets of $10.5 million.

On 16 August the Government announced its decision on the NCP Review, which was to retain the Board's vesting powers over coarse grains and oilseeds for a further five years, and that these powers then be sunsetted.

A working party of Senior Officials was established to work out a course of action in respect of the Board, and to report back as soon as possible.

It rapidly became clear to the working group that the Board needed either a substantial injection of equity, or to sell the profitable elements of its business.

The alternative was immediate liquidation, and the crystallisation of much larger losses.

The Government agreed in September 2000 that the matter needed to be managed in an orderly way and expressions of interest in the Board's business were invited.

Under the pressing deadline of an imminent harvest, the next three or four weeks were taken up with detailed negotiations amongst the key stakeholders, and potential bidders.

The Board's bankers, who were facing considerable losses, were a key element in this, as their support for any arrangements was crucial.

It is now a matter of record that Grainco was the successful bidder and the Government announced on 26 October that the Board's powers over barley, canola and sorghum would be retained until 30 September 2005, that the other grains would be deregulated immediately, and that Grainco had been appointed as the Board's sole agent.

This provided the best outcome for all concerned: growers, the Board, the Board's creditors, and the Board's new agent, Grainco Australia Ltd.

The Government's focus during this period was to ensure such an outcome.

Once this outcome had been resolved, an Administrator was appointed to manage the Board's affairs and the Public Accounts Committee Inquiry began.

In the meantime ICAC was alerted to the Board's predicament by NSW Agriculture.

The Administrator's tasks have included sorting out the Board's affairs, determining the total extent of its losses, ascertaining the final amounts due to growers who had supplied the 1999/2000 pools, and ultimately determining responsibility for these losses, and whether recovery action is feasible.

This task is ongoing. During his initial work it rapidly became clear that the Board's losses were well in excess of $35 million. Indeed at the time of the Government's decision in October 2000, updated confidential estimates had indicated losses of $50 million, possibly as high as $70 million.

With open futures, hedging and foreign exchange contracts still in existence, it was not possible to determine these losses more accurately at that time, and with the Australian dollar continuing to drop throughout the middle part of 2000, these losses were eventually crystallised at a higher figure than had been hoped, due to a very low dollar at the time of close-out.

The Administrator's most recent estimates of the Board's losses are $90 million for 1999/2000, and a further $60 million in 2000/01.

I am hopeful that the Board's Accounts for the year ending 31 August 2000 will shortly be finalised, and then audited, so that they can be tabled in Parliament.

It is indeed a sorry saga, and is in part a reason for the bill now before the House.

This bill puts into place the final administrative details for the winding up and eventual dissolution of the NSW Grains Board.

The Government has made a commitment to continue vesting in three grains, barley, canola, and grain sorghum until 30 September 2005.

At present under the Act any primary product may be declared a commodity by proclamation and vested in the Board by further proclamation.

This wide vesting power will be removed and vesting will only remain for barley, canola and grain sorghum.

The present proclamations declaring barley, canola and grain sorghum will be rescinded and their vesting will be set out in the Act.

On the 24 October 2001 the Supreme Court approved a statutory Scheme of Arrangement under section 80 of the Act, which provides for farmer creditors to be paid in full and for remaining monies received by the Board to be paid out to the various other creditors, including the Bank creditors and various unsecured creditors.

The Scheme of Arrangement was developed by the current Administrator, Mr Murray Smith of KPMG.

This bill provides that the Administrator, and any future administrators appointed under the Act, will be given the same statutory immunity as the Act presently provides for the Crown, the Minister, the Director-General, Board members and staff.

The bill also includes the word "omissions" as well as "things done" within the statutory immunity under Section 98 of the Act. The inclusion of omissions updates the Act to be in line with similar provisions in other Acts.
The Act currently provides that the reasonable costs and expenses of the Administrator, as certified by the Minister, are payable from the funds of the Board.

This apparently includes the certification of the costs and expenses of operating the Board as well as all costs and expenses of the Administrator in performing this role, such as remuneration.

Where the costs and expenses of the Administrator are being paid directly by a third party such as the Banks, this requirement imposes an unreasonable administrative burden on the Minister, who is required to assess and form a view as to the "reasonableness" of all costs and expenses incurred by the Administrator for every payment.

This bill provides that the Minister will no longer have to certify the costs and expenses of the Board or the costs and expenses of the Administrator in performing this role, if those costs and expenses are paid by a third party, such as the bank creditors.

However the amendment ensures the Minister retains the power to disallow any costs or expenses of the Administrator, such as remuneration (that is, any costs or expenses that are, in his opinion, unreasonable) where those costs and expenses are being paid from the funds of the Board thus continuing the public interest role of this section.

I commend this bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [9.50 p.m.]: The Opposition does not oppose the Grain Marketing Amendment Bill, which will amend the Grain Marketing Act by removing certain vesting rights and clarifying other vesting rights under the Act, except in relation to barley, canola and grain sorghum. Other grains and legumes that previously came under the jurisdiction of the Grains Marketing Board, or Grainco, no longer come under its jurisdiction. The Grains Marketing Board now has vesting rights only in relation to barley, canola and grain sorghum. The bill also replaces existing proclamations that vest commodities in the New South Wales Grains Board with a clause that provides for barley, canola and sorghum to be vested in the board until 30 September 2005. I shall return to that interesting point later.

The Minister will no longer have to certify costs and expenses of the board or the administrator. Honourable members will be aware that the expenses of the administrator are being paid by a third party, such as bank creditors, who should investigate those expenses and costs. So the Minister will no longer play a role in that regard. The bill includes the administrator of the board in the list of parties that enjoy statutory immunity under section 98 of the Act. That provision will provide statutory immunity to the Minister, the board, the director-general and the staff of the board, but that immunity will not extend to fraud, negligence or reckless practice. That is an important provision in this bill.

The Grains Marketing Board has had a chequered history—that is probably an understatement. Honourable members will be aware that the New South Wales Grains Board was formed in 1991. Prior to that we had the Barley Marketing Board, the Sorghum Marketing Board and the Oats Marketing Board. The only one of those boards that performed reasonably successfully was the Barley Marketing Board. The other boards got into financial difficulties and collapsed. The Opposition supported the course taken by the Government for a number of reasons. When the Grains Marketing Board collapsed it owed producers about $150 million. A number of producers in regional New South Wales faced financial ruin because of the money owed to them by that board so Treasury decided to pay growers $11 million.

Today producers of the three commodities to which I referred earlier are paying a levy of $150 per tonne. The money being collected from that levy is being paid to Treasury to compensate it for honouring its agreement with the Grains Marketing Board to pay $11 million to producers. So producers are funding themselves—the Treasury was not that generous. Once that money has been repaid all bets will be off and the levy will no longer be imposed. Grainco, from Queensland, was the successful tenderer in obtaining vesting powers amounting to $25 million for those three commodities in the New South Wales grains industry.

My colleagues in the lower House, including the shadow Minister for Agriculture, Ian Slack-Smith, and the honourable member for Lachlan, Ian Armstrong, spoke at considerable length about the recent ConAgra deal and its likely impact on grain trading arrangements in New South Wales. I concur with those comments, which I believe were appropriate. It is a concerning situation. I do not intend to canvass that situation at length, but I urge honourable members with an interest in this matter to read the comments made in the other place by the honourable member for Barwon and the honourable member for Lachlan. If the Government had followed some of their suggestions, it would not have suffered such a disaster last weekend in Tamworth, when it was wiped off the electoral map. Never has the Labor Party received such a low vote in the Tamworth-Gunnedah region, where a considerable number of grain growers live. I noted with interest the front-page story in last week's edition of the *Land* that commented on the ConAgra deal. In part, the article states:

> Support for Grainco Australia's market powers over NSW sorghum, barley and canola crops has all but vanished this week following confirmation of the company's joint venture deal with the US grain trading giant, ConAgra.
>
> Scrapping the former NSW Grains Board's vesting powers, bought by Grainco for $25.2 million last year, is now shaping as a likely state election issue in the bush despite the poll still being up to 18 months away.

That is an important comment. The editorial in last week's edition of the *Land* also makes enlightening reading along similar lines. It states:

> The NSW Government, in its wisdom, has seen fit to flog off the legislated monopoly grain marketing powers to help reduce the financial shambles left by the defunct Grains Board. Now a multinational company has its hands on those vesting powers.

The editorial continues:

> Clearly, the NSW Government shouldn't have sold the vesting powers in the first place.

That is a pretty fair comment.

The Hon. Richard Jones: What happens now?

The Hon. DUNCAN GAY: That is the problem; it is what we are concerned about. This framework is in place but the Government should have assumed more of a hands-on role. The Minister's role in this process should not be underestimated. The effects on grain growers in New South Wales will continue to be felt until 2005 as a result of the Government's short-sighted deals. However, the Opposition will not oppose the bill.

The Hon. RICHARD JONES [9.58 p.m.]: I share the concerns expressed by the Deputy Leader of the Opposition about this matter. The Grain Marketing Amendment Bill puts in place the final administrative details for the winding-up and eventual dissolution of the New South Wales Grains Board disaster. When the board collapsed it owed producers about $150 million. Treasury decided to pay growers $11 million, and growers are currently paying a levy of $150 per tonne to Treasury to compensate it for honouring its agreement with the Grains Marketing Board. The Grains Board's final year of declared surpluses was 1998-99. The matter is currently under scrutiny, and questions have been asked about why the Minister was not aware sooner of the situation regarding the Grains Board.

As to the board's current financial position, its administrator has found its losses to be substantially higher than previous estimates, with unaudited losses to August 2000 in excess of $90 million. The entire Grains Board situation has been an utter disaster. Like the Deputy Leader of the Opposition and his colleagues in the other place, I am concerned about ConAgra's involvement in this matter. That company, which is the second biggest marketer in the world, essentially has vesting rights for barley, canola and grain sorghum in this State.

I find disturbing that fact and the fact that this company has vesting rights until 30 September 2005, which I believe to be far too long. Some people might say growers are not obliged to grow these grains; they can grow other crops in the meantime. However, we are all aware that those who are growing grains will continue to grow them. These vesting rights are in the hands of this giant multinational corporation when they should be in the hands of Australians. This whole Grains Board collapse has been a total disaster. As I said earlier, I believe that the vesting rights should cease in 2003.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: [10.00 p.m.]: The Grain Marketing Board Amendment Bill, which is of great concern to the Australian Democrats, is the Government's response to the financial collapse of the New South Wales Grains Board. The collapse of the Grains Board has affected the livelihoods of many grain growers. One of those grain growers is Miss Elizabeth Kirkby, a member of the Australian Democrats and former member of this House, who had contracts to supply canola from her farm outside Temora.

The New South Wales Grains Board was a statutory corporation established in 1991 as a single desk marketing authority for domestic and export course grains and oilseeds. Due to the Grain Board's insolvency crisis, which came to light last year, the Minister for Agriculture entered into an agreement with Queensland-based company Grainco in October 2000 to take over the board's contracts for course grains and export malt barley with New South Wales growers. The board's vesting rights for oats, sunflower, safflower, linseed and soybean have also been removed as they are now traded freely on the commodities market, and the board's vesting powers will now be limited to barley, canola and grain sorghum by statute until 1 October 2005.

Clauses 8 and 9 of the bill will amend sections 23 and 31 of the principal Act and will remove the current requirements for the Minister to certify the reasonable costs and expenses of liquidators and administrators of the board before they can be paid from the board's funds. The bill will also extend the limited liability of the board's six part-time members and director to the new administrator. This will apply also to any of the director's omissions and acts. This is standard when a company or corporation is under an administrator because of insolvency. Under this bill the Minister will have a veto power to appoint an administrator. However, as the Minister has given this House an assurance that he will facilitate any request from the Grains Board administrator for an Australian Securities and Investments Commission, the Democrats' initial concerns have been allayed for the time being.

The Public Accounts Committee conducted an inquiry into the causes behind the financial collapse of the Grains Board and found a severe failure of corporate governance in the conduct of the board's operations. The report concluded that all stakeholders, from the Treasurer to the New South Wales Farmers Association and from the Minister for Agriculture to the Auditor-General, were culpable of mismanagement, poor financial planning and commercial judgment, and weak accountability systems and procedures.

The Hon. Michael Egan: He did not say that at all.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: What he said was pretty close. The conduct of a former agent is also under investigation by the Independent Commission Against Corruption [ICAC]. An article in the *Land* dated 2 November 2001, written by Alan Dick and entitled "Grains Board's Two way Trader", states:

> The actions of a manager of the NSW Grains Board's Toowoomba office in trading grain on his own behalf were totally against board policy, two former marketing managers of the board have told the Independent Commission Against Corruption (ICAC).
>
> Robert Thompson, general manager for marketing from 1992 to 1997, said it was a "dismissible" offence, while Peter Jeffries, who held the position from 1998 to 2000, said it was "strictly forbidden".
>
> They were referring to Darren Bizzell, whose activities as the board's Toowoomba office manager from 1995 were the subject of the latest rounds of ICAC hearings in Sydney last week into some of the now defunct board's former employees.
>
> ICAC said that while employed by the board, Mr Bizzell had also dealt with the board through two private companies, Barracuda Grain Agents Pty Ltd and Queensland Grain and Service Agents (QGSA), which had a network of farmers who stored and sometimes cleaned and blended grain mostly owned by the NSW Grains Board. Mr Bizzell agreed in evidence that in 1998 and 1999 he had received about $2.8 million from the board through his private companies for the sale, carting, storage and handling of non-existent grain by faking delivery and weighbridge documents.
>
> ICAC claims while payment for the fictional grain was recycled back to the board through an arrangement with Queensland trader Carsburg Grain, Mr Bizzell had been paid hundreds of thousands of dollars worth of services that had not been provided. But Mr Bizzell has claimed he had in effect repaid some of the money via a credit arrangement with the board, whereby the board would not pay QGSA for future services up to the level of the credit.
>
> Mr Jeffries told ICAC he had become concerned when seeking to confirm what grain stocks the board held in Queensland at the end of the 1998 9 financial year.
>
> His attention was drawn to some outstanding invoices from QGSA. At the time he had not been aware of any association between Mr Bizzell and QGSA.
>
> He had solicitors conduct a search and discovered QGSA was owned by Mr Bizzell.
>
> "It was strictly forbidden for any Grains Board officer to trade in his own right," Mr Jeffries said.
>
> The story that unfolded before ICAC was that Mr Jeffries sent two staff members to recover records from the Queensland office but Mr Bizzell would not give them access to records.
>
> Mr Jeffries then went to Queensland himself and accompanied Mr Bizzell on a tour of the sites where grain was supposed to be stored, including one on Mr Bizzell's own property, and found the grain was not there.
>
> He told ICAC Mr Bizzell had not been co-operative. Mr Bizzell had indicated QGSA was operated by Kate Robertson (identified by ICAC as Mr Bizzell's de facto partner) and he did not have access to records of transactions with the Grains Board.

> Mr Jeffries also wrote to Brett Carsburg of Carsburg Grains, asking him to sign a form confirming his company held about 10,900 tonnes of barley on behalf of the board at Kingaroy and Proston, Queensland. Mr Carsburg had not done so and had sent instead a three-line letter. It said Carsburg agreed with the figures to be invoiced to Carsburg as per its agreement with Mr Bizzell of the NSW Grains Board.
>
> Mr Carsburg told ICAC he had done this at the instigation of Mr Bizzell.
>
> He had been aware Mr Bizzell owned QGSA but had been under the impression the Grains Board had an alliance or agreement with QGSA and the board was aware of what Mr Bizzell was doing.
>
> He said Mr Bizzell had rung him and told him not to sign the letter on stocks and had virtually told him what to write in reply to the board. He had been "shocked" when Mr Bizzell asked him to lie about the stocks.
>
> But in evidence Mr Bizzell denied he had asked Mr Carsburg to lie over the stocks but agreed he had suggested he not sign the letter and that he "possibly could have" suggested the wording of Mr Carsburg's response to the board.
>
> Mr Carsburg said he had understood the arrangement with QGSA to be a "wash-out" of Carsburg's contract with the Grains Board, which would have had the effect of cancelling the contract. He had been surprised when he had subsequently received an invoice from the board for grain. Mr Carsburg agreed he wanted the profit from the "wash-out" and did not want any physical transfer of grain.
>
> When Mr Bizzell had explained the arrangement he had said that the "wash-out" could not be carried out in the normal way but by a contract swap.
>
> In initial conversations Mr Bizzell had been "very quick and very vague" about details of the arrangement. Mr Bizzell had told Mr Carsburg to expect invoices from the board but that Mr Bizzell would forward him the money to pay for the invoices in advance of the invoices being received.
>
> Although surprised by this, Mr Carsburg said he had not questioned it. "There didn't seem to be a problem," he said. "I didn't think he would do the dirty on me."

There is still much to be resolved about the Grains Board. After much speculation Grainco announced last week that it would enter into a venture with American grain trader ConAgra and that it would establish a marketing company called Marketlink, which would take over the vesting rights of commodities produced by New South Wales growers that were purchased by Grainco last year. ConAgra, a 50 per cent owner of Barrett and Burston, a malting barley brewer, also owns cattle feedlots. That move would appear to marginalise the bargaining power of growers. That is vertical integration at its extreme.

ConAgra can now potentially set the desk price for malting barley and it now has access to the pool of New South Wales grain. In an article written by Andrew Marshall in the *Land* dated 6 September, Mr Angus McNeil, chair of the New South Wales Farmers Association grain growers committee said that the main concern of growers about the joint venture was the lack of transparency that will now be available in New South Wales grains market. The same article quoted the Minister as having given a commitment that vesting arrangements will continue to be monitored by the Grains Board administrator and by the Government and that any breach of the deed of agreement between Grainco and the State would result in a default of the contract.

How will the Government do that? Under what current legislative arrangements can that be achieved? The Minister might like to enlighten me when he replies to debate on this bill. I would like a commitment from the Government that it will monitor this issue and take appropriate action, when possible, to ensure that New South Wales growers will receive competitive prices for their products. I am concerned about this legislation. This is legislation post facto, given that the Grains Board has gone broke and has been sold.

Grainco is now in partnership with an American company. New South Wales no longer has control of the price of grain, nor does it seem to be under market control. I am concerned that Australia cannot keep control in the long run. I note that an article in today's *Australian Financial Review* refers to Grainco impounding significant quantities of grain held in Australia by New South Wales grain trader Ray Brooks Pty Ltd. It attempted to maintain a single desk and single price, but, unfortunately, was not able to do so. It has gone bust with difficulties in administration, management or auditing. We are being asked to pass this bill, which will acknowledge the reality of an unsatisfactory situation. I am very unhappy about this bill.

The Hon. DOUG MOPPETT [10.11 p.m.]: My colleague the Deputy Leader of the Opposition dealt with the immediate impact of the bill with great perspicacity and illuminated its future implications for grain growers. However, I think it is worth reflecting on the disastrous circumstances in which this catastrophe was revealed within the New South Wales Grains Board and on the deplorable steps that led to this situation, including some examples of malfeasance, to which other honourable members have alluded. For an old Country person as I am—

The Hon. Michael Egan: You're not an old country person.

The Hon. DOUG MOPPETT: No, a person from the Country Party, which is a name revered but not in current usage.

The Hon. Michael Egan: It is Country Labor now.

The Hon. DOUG MOPPETT: Country Labor is irrelevant, it is a sham! No-one is fooled by that. For a long time one of the great goals of the Country Party, indeed of most rural farming organisations, was to seek to institute systems of what we called orderly marketing: to try to set up organisations that could act on behalf of the many production units against the much fewer and more powerful units of organisations that purchased commodities produced by farmers. Of course, from that was produced the Marketing of Primary Products Act in New South Wales and a number of commodities came under this jurisdiction. We must recognise that we live in different times and all sorts of new commercial transactions have entered the field since the time when the various boards were successful in marketing primary products on behalf of producers.

In many cases the demise of these marketing organisations means entering into the allied or slightly removed operations of forward trading and, worst of all, currency speculation that in fact brings about their demise. In commercial terms everyone knows the old adage "Don't expose yourself to a situation where you have sold long and are buying short." Unfortunately, many primary producers have done just that through their organisations; they found themselves redeeming contracts that amounted to an enormous loss. The difficulty is that private organisations are around the corner with substantial capital, whereas the boards and other statutory organisations that represented primary producers had in their charter the obligation to distribute profits to growers and therefore had no stock of capital.

When it came to indulging in forward contracts or speculating on currency, often they found themselves on a sandbank when the tide went out. We now approach those situations phlegmatically. Farmers do not want to be artificially propped up; they want a business proposition that will last. The Government has taken these steps in consultation with the industry and to a major extent has preserved the equity farmers had in those pools. I agree with my colleagues and others who have spoken in this debate that since those early arrangements people in rural New South Wales have been alarmed that in this vast ocean of private enterprise suddenly a great shark can appear and just swallow them up without hesitation.

The Hon. Duncan Gay: It makes you wonder whether it was always the plan.

The Hon. DOUG MOPPETT: Yes, you do wonder whether it was always envisaged that somewhere down the track this would be the ultimate outcome; it would fall to the lot of a multinational that might come along and swallow the business. That would be a most unfortunate outcome. Certainly other proud industries have been brought to their knees by similar attempts, albeit bravely set out in the initial enterprise, that failed to have the financial clout to see it through, such as in the wool industry. At the moment the cotton industry is struggling and in many cases growers are suffering from attempts to hedge on the fluctuations in American currency. It is a challenging time for people in commerce everywhere and it is extremely challenging for those in primary industry. We all recognise that farmers are good at growing commodities because that is what they like to concentrate on. Certainly today they are keen to key into all market developments, but to keep up with the movement of international corporations is beyond the capacity of most farmers.

The Hon. Duncan Gay: It is beyond the capacity of this Government as well. They have lost $650 million out of Pacific Power in trading. How do they expect farmers to do it?

The Hon. DOUG MOPPETT: To do any better, that is right.

The Hon. John Jobling: It is not a game forever.

The Hon. DOUG MOPPETT: No. It is a game in which the losses are enforced inexorably. No matter how cruel the outcomes, they are enforced. The gains that appear as an illusion to start with are rarely harvested. Whilst we recognise that it is feckless to oppose this legislation, it is a matter of regret to many people that we have seen the demise of the New South Wales Grains Board. The ultimate denouement of this whole story reflects little credit on the Government and leaves farmers and those whose industry depends on their welfare in a state of heightened anxiety rather than one of assurance and certainty. Certainly the Government has absolved itself of any responsibility.

The Hon. Duncan Gay: If we opposed it the farmers wouldn't get paid. There should be a better way to do it.

The Hon. DOUG MOPPETT: My colleague the Deputy Leader of the Opposition has hit the nail on the head and put it succinctly. We are between the devil and the deep blue sea. If we oppose the bill the growers lose out heavily in the short term and we would show little gain from such opposition. As I say, the Government should take no credit from this. At the moment its name in country New South Wales is a matter of derision. The most interesting thing—and I know it is wrong to digress from the subject—is that most people will quote Tamworth, but I have a lovely quotation from the Parkes election campaign, where in a radio interview the so-called Country Labor candidate petulantly said, "Would all those country people up at the National Party office get off the radio and give the Dubbo people a chance," as if there were some distinction between country people and Dubbo people. One listener rang in and said, "Mr Knagge, you have just blown the 'Country' out of Country Labor." That said it all. Country Labor's interest has been facetious at best, simply designed to gain some evanescent favour.

The Hon. Michael Egan: "Evanescent"—what does that mean?

The Hon. DOUG MOPPETT: Fading away, ephemeral. It has proved to be such. While the Government has done what it regards as inevitable in relation to the New South Wales Grains Board, farmers will not salute it. It is a moment of great regret that this legislation has been introduced. As the Deputy Leader of the Opposition said, it is like having a gun at your head. If we do not pass it we will land farmers in a predicament. If we pass it we are taking Hobson's choice, and farmers will get a poor deal. Nevertheless, with those reflections, I will join with my colleagues in voting for the bill.

Reverend the Hon. FRED NILE [10.21 p.m.]: The Christian Democratic Party supports the Grain Marketing Amendment Bill with the same reservations as stated by the Deputy Leader of the Opposition. Obviously this legislation follows the collapse of the New South Wales Grains Board and the subsequent appointment on 10 November 2000 of Murray Smith from KPMG as administrator of the board. I have two questions. Why would the bill remove the requirement that the Minister certify the reasonable costs and expenses of the liquidators and administrators of the board before they can be paid from funds of the board? Why would the Minister not have to certify? With the financial collapse of the Grains Board it would seem that more supervision or certification is needed, not less.

The Hon. Michael Egan: How about we get out of all that business altogether?

Reverend the Hon. FRED NILE: You do not want the Minister to certify?

The Hon. Michael Egan: How about letting people sell their product on an open market?

Reverend the Hon. FRED NILE: This has to do with the costs and expenses of liquidators and administrators. It is like them getting a blank cheque if the Minister does not have to certify reasonable costs. The second question relates to item [23] of schedule 1, which makes certain consequential provisions. In particular, it will ensure that persons are not liable to be prosecuted for offences committed on or after 30 October 2000 in respect of primary products that will cease to be commodities on the commencement of the proposed Act. Why would there be an amnesty for those people, unless it supposedly applies to the new board, and the new board is supposed to have not committed any offence? I pose those two questions.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.23 p.m.], in reply: I thank honourable members for their contributions and I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ADJOURNMENT

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.26 p.m.]: I move:

That this House do now adjourn.

AUSTRALIAN-CHINESE WAR MEMORIAL

The Hon. HENRY TSANG [10.26 p.m.]: I wish to inform the House of the announcement yesterday by the Premier of New South Wales of the winning design for the Australian-Chinese War Memorial at the Chinese Gardens at Darling Harbour. Australian Chinese have served Australia from the Boer War to the recent United Nations peacekeeping force. Like other Australians, the Chinese community volunteered for the armed services, and at times they changed their names and ages so they would have the honour of serving. Australian Chinese veterans believe that these heroes should be remembered for their service, as their service is our heritage. I thank Mr Gilbert Jan for his efforts in compiling a list of veterans who have served Australia over the past 100 years and for his persistence during late 1999 in searching for a site for a war memorial for Australian Chinese servicemen and women. I thank the RSL President, Rusty Priest, for his support for such a monument. With my persuasion the RSL executive passed a resolution of support on 15 March 2000. In announcing that support Mr Priest, said:

> I look forward to a long overdue memorial being planned, constructed and dedicated.

I have subsequently met with the Australian Chinese Ex-Services National Reunion, whose charter is to find a suitable site for such a war memorial. I congratulate the President, Mr Tom Gheong, on assembling dedicated ex servicemen and servicewomen throughout Australia for such a noble cause. I thank the Australian Chinese Ex-Services National Reunion for inviting me to be its patron.

The Hon. Michael Egan: Who is its patron?

The Hon. HENRY TSANG: I am its patron.

The Hon. Michael Egan: Congratulations!

The Hon. HENRY TSANG: I will tell you a story about one Australian Chinese who was an original Anzac and served in Gallipoli, the Middle East and France. Trooper Billy Edward Sing of the Fifth Light Horse of the 81st Battalion won a Distinguished Conduct Medal and was awarded the Croix de Guerre by the French Government. He excelled as a sniper and was a man of immense courage. I met with Major-General Darryl Low Choy, the highest ranking Australian Chinese in today's defence forces. He is the adjudicator who selected the winning design for the war memorial, which will be located at the corner of Dixon and Liverpool streets. I am honoured to be an honorary member of the RSL and a trustee of the Anzac Trust. Indeed, I am prouder than my brother, Lieutenant-Colonel Dr Victor Tsang, who is in charge of the Dental Corps in New South Wales.

The Hon. Michael Egan: Who is?

The Hon. HENRY TSANG: My younger brother is in charge of the Australian Army Dental Corps.

The Hon. Michael Egan: He is the equivalent of Tutti-Frutti then.

The Hon. HENRY TSANG: The Hon. Dr Brian Pezzutti takes care of people in the operating theatre, while my brother takes care of all the dental problems. That is important during war.

The Hon. Michael Egan: They have to have good teeth.

The Hon. HENRY TSANG: He will look after your teeth as well. I express my appreciation to Dr Andrew Refshauge, the Deputy Premier, for providing the site at the corner of Dixon and Liverpool streets, and to the Minister for Transport, Carl Scully, for installing traffic lights at Dixon and Goulburn streets to provide safe pedestrian traffic. I thank the Commonwealth Government for its support in the form of an allocation of $25,000 for the monument. Finally, I thank the Premier for providing $10,000 and for his promise that the New South Wales Government will take care of the monument. I assure the Premier that Australian Chinese servicemen will dedicate their service to Australia. [*Time expired*.]

ARMIDALE POLICING

The Hon. GREG PEARCE [10.31 p.m.]: Armidale is no Cabramatta but, like many other regional centres in New South Wales, it suffers from the twin problems of lack of police resources and significant concerns about crime and public safety. I recently had the opportunity to visit Armidale and to observe at first hand the appalling working conditions for Armidale police. I also talked to representatives of local government,

the community and some police about policing issues. Armidale's police officers have to work from a ramshackle of five buildings, one of which is a temporary module. There is no capacity for the police to interact during the day because of this physical separation in what has long been considered one of the worst police stations in the State. However, it is not just the physical surrounds that make policing a problem in Armidale, as is the case in many other regional and country centres.

For some time there have been only 40 officers at the station and a number of those are on stress leave or are allocated to other duties which keep them from front-line policing. The result is that at night there are usually only three police on duty, with the obvious consequence that if two are required to attend any incident then there are no police resources available in the city and surrounding areas. The new Minister for Police has already blotted his copybook by showing his willingness to fudge the figures on police numbers. It is not just a matter of fudging those numbers for the State as a whole; there is an urgent need to rectify the lack of front-line police in centres such as Armidale. I note that the honourable member for Northern Tablelands, Mr Torbay, has recently been responsible for beating up the crime rates in the Armidale-Dumaresq area.

Most recently Mr Torbay was quoted in the *Armidale Express* on 3 December as claiming that official New South Wales Bureau of Crime Statistics and Research figures show that incidents of attacks on people aged over 65 almost doubled between 1995 and 1999. What an incredible piece of selective reporting by Mr Torbay! In fact, the New South Wales recorded crime statistics for 2000 show that many categories of crime decreased in the Armidale-Dumaresq local government area in 1999 and 2000. Thanks to the efforts of the over-stretched Police Service, there is little serious crime in Armidale; there is certainly not a crime wave. However, there are particular areas of concern. Offences such as robbery are significantly below the State average, and decreased from 1999 to 2000.

In the category of break and enter, the rate and absolute numbers declined from 1999 to 2000 and were more or less consistent with the State averages. Stealing offences increased from 1999 to 2000 at 162 per 100,000; motor vehicle theft is much lower than the State average of 808; and stealing from motor vehicles, although increased at 835 per 100,000, is well below the State average of 1,386. There are serious problems in relation to street behaviour. For example, in the category of malicious damage to property, although the rate fell from 1999 to 2000, at 1,906 per 100,000 in 2000 it is well above the State rate of 1,445. Offensive behaviour offences are well above the State average, although once again they declined from 1999 to 2000.

The number of drug offences recorded generally fell from 1999 to 2000 and were mostly below the State averages, except in relation to possession and/or use of cannabis, which also fell from 1999 to 2000 but was significantly above the State average. I advise the honourable member for New England not be lazy and misleading with the use of crime statistics, and not to promote hysteria by selectively looking at the statistics. I commend local Liberal, Scot MacDonald, the Liberal Party's Northern Tablelands Conference President and a highly effective Senate candidate, who, earlier this year, took Mr Torbay to task for his comments. Mr MacDonald criticised the campaign of hysteria that Mr Torbay sought to work up, and chided him for frightening people away from living and investing in Armidale.

As we saw with Cabramatta and the reckless and dishonest use of crime statistics by the Premier, the former Minister of Police and Commissioner Ryan, these statistics should not be misused for base political motives. When the next set of figures is released in February 2002 for the 2001 year crime rates may or may not have increased in Armidale. Whichever is the case, the need for increased police numbers, better working conditions and better utilisation of police resources on the ground will not be furthered by misquoting the figures. Mr MacDonald's more measured approach, valuing the community above cheap political point scoring, is to be commended.

M5 EAST AIR QUALITY MONITORING STATIONS

The Hon. PETER BREEN [10.35 p.m.]: Tonight I place on record how legal proceedings to prevent the opening of the M5 East road tunnel on Sunday were averted. Honourable members will be aware that the Roads and Traffic Authority [RTA] placed advertisements in the *St George and Sutherland Shire Leader* and the *Bankstown Torch* at the end of October informing residents that five pollution monitoring stations were in place. The advertisements were clearly wrong. Only two dedicated air quality monitoring stations had been installed. Of the other three, one measured background air quality only, another was just a concrete slab and the last was nothing more than a surveyors mark on the ground. An argument ensued between residents and the RTA over what constituted a comprehensive air quality monitoring network as required by the Department of Urban Affairs and Planning [DUAP] conditions of approval for the M5 East motorway extension, including the road tunnel.

The RTA said the two air quality monitoring stations that were in place amounted to a comprehensive network even though both were located to the east of the tunnel's single emissions stack and upwind of the prevailing weather conditions. Through Residents Against Polluting Stacks [RAPS], residents obtained legal advice from barristers Sandra Duggan and Tom Howard and environmental lawyer Tina Spiegel, who is also a qualified mediator. The legal advice was all bad from the point of view of commencing proceedings. The Department of Urban Affairs and Planning had approved the RTA protocol for monitoring and assessing the air quality in the vicinity of the emissions stack, and if the RTA said two monitoring stations was a comprehensive network, that would be the end of the matter—newspaper advertisements to the contrary notwithstanding.

Furthermore, the additional DUAP requirement that the comprehensive monitoring network should be in place for six months prior to the opening of the road tunnel had been complied with, according to the lawyers, since the two monitoring stations had been operating for more than a year. Residents remained puzzled, however, that the newspaper advertisements declared so categorically that the comprehensive network consisted of five monitoring stations, not two. It was also a fact that RTA employees were running around like ants before a storm to get the other three monitoring stations up and running. At that point, at the suggestion of Giselle Mawer, Judy Rossi and Mark Curran of RAPS, upper House members voted in favour of a call for papers under Standing Order 18 requiring the Director-General of the Department of Urban Affairs and Planning to produce all documents relating to the air quality monitoring network by 5.00 p.m. on 21 November 2001. The documents duly arrived and were found to include a request from the RTA for DUAP's approval of five monitoring stations, not two. This request was dated 7 June 2001, well ahead of the six-month period before the scheduled opening of the tunnel.

Residents went back to the lawyers with this new information. Not only had the RTA failed to build the comprehensive air quality monitoring network, it had failed to monitor the air quality in the vicinity of the emissions stack for six months ahead of the tunnel opening as required by the DUAP approval. The lawyers were more optimistic about the prospects of success, but the vagaries of the DUAP approval remained a problem. Tina Spiegel drafted a class 4 application to the Land and Environment Court seeking an order that the RTA be restrained from opening the M5 East motorway and road tunnel until it complied with the DUAP conditions of approval in relation to a comprehensive air quality monitoring network. A copy of this application was forwarded to the RTA along with a list of demands.

Residents were particularly concerned that even if the comprehensive monitoring network were in place, the way the motor vehicle emissions were to be measured was surrounded by uncertainty. Residents also wanted the exhaust fans to be run at high speeds, particularly at night, to send pollutants higher into the atmosphere to disperse some of the most dangerous substances in exhaust emissions. Against my advice—I wanted to see the RTA in court—Tina Spiegel and RAPS people set about the hard task of negotiating with the RTA and its lawyers. One session took more than four hours. The result was a triumph for the residents, and I must confess that the mediation process achieved much more than I expected, confirming the biblical imperative to settle our disputes before going to court. Terms of settlement included increasing the velocity of the ventilation fans, proper monitoring of the emissions and improved benchmarks for determining whether exceedances have occurred.

A steering committee will also be established to assess the air quality monitoring data and an expert is to be appointed to the committee to represent the interests of residents. I congratulate all the parties involved in this dispute, including the RTA and its lawyers, on reaching a settlement, and express my sincere hope that the emissions from the new motorway tunnel will not endanger the health of the people living in the Turrella Valley. If an environmental and health problem does arise, it is some comfort to know that proper monitoring now appears to be in place to assess the extent of the problem, and benchmarks have been established to remove some of the uncertainties that might otherwise surround the remedies.

VOLUNTEERS

The Hon. AMANDA FAZIO [10.39 p.m.]: Tonight, in this my last adjournment speech for this year, I wish to speak about volunteers. In the International Year of Volunteers there have been sterling efforts from people across the community in New South Wales and Australia. People have volunteered time and effort and have made major contributions to many valued community services that make a positive contribution to the Australian way of life. This year I have visited many community organisations that provide valuable services in the three duty electorates for which I am responsible—Myall Lakes, Tamworth and Northern Tablelands. Many of those organisations are dependent on the volunteer contributions of those who work to provide services and those who manage the services. So often when we think of volunteers we think only about those who provide the services on the ground; we forget that every organisation that provides services also has a voluntary management committee.

Those committees usually comprise people who have some expertise in the legal, accountancy or management fields. They lead busy lives but they put aside time to make sure that all accountability requirements of volunteer organisations are satisfied. They make sure that all the insurances and confidentiality policies and other requirements of organisations meet the current standards. They also make sure that the funds required to keep volunteers in the field, to maintain services and to keep the offices operating are managed effectively and efficiently. I would like to thank some of the organisations I visited. My list is by no means exclusive. I visited the Taree Women's Refuge, which provides a good service for women in the Manning Valley area. I also visited the Forster Families First service, which provides an excellent service. I met not only with the staff there but also with some of the volunteer home visitors as well as those who are visited. They told me about the positive impact that the service has had on their lives. I have visited adult and community education centres in Forster, Walcha and Armidale.

The NEWLinc organisation in Armidale is providing Internet links for women across the New England region. The Walcha Telecottage received surplus Olympic computers to provide a invaluable service in Walcha. The computers are used to publish a local community newsletter. Some organisations do not yet provide services, but they are working hard with their representatives in the Legislative Assembly, with me and with the Legislative Council to provide much-needed services. A prime example of that is the Tenterfield Skate Park Committee, which is working hard to establish a skate park for children in the Tenterfield area. Those children are not the type of children who like to be involved in team sports such as football or soccer. I have noticed a lot of kids in the area just riding around aimlessly on their pushbikes. They would like nothing better than to have a skate park where they can expend their energy effectively in a way that does not disturb anyone else but which allows them to gain some skills and some recognition among their peers.

Apart from all of the community enthusiasm that I wish to recognise in the Year of Volunteers, I also wish to note the work undertaken by ordinary rank and file members of the Australian Labor Party [ALP] in supporting the ALP and its activities. In the recent Federal election I worked with four candidates—the ALP candidate in Lyne, Bob Horne in Paterson, and both candidates fielded by the ALP in Northern Tablelands, namely, Pat Dixon and Annette McCarthy, who ably replaced Pat. A stalwart of the New England campaign was Bette Guy, the campaign director for both candidates. She carried on despite being emotionally distraught at the loss of Pat Dixon, one of her close friends. I also wish to recognise the special work of members of the Tamworth branch of the Australian Labor Party, who, only four weeks after the recent Federal election campaign, turned up again last weekend and put in a very good effort in the Tamworth by-election in which the Labor Party vote increased by 25 per cent. I particularly thank Ray Tait and his family for their effort, as well as Dianne Carter and Christine Robinson. I sincerely thank the Tamworth branch members for their great contribution to the party. I like volunteers! [*Time expired*.]

TEACHERS ACHIEVEMENTS

The Hon. PATRICIA FORSYTHE [10.44 p.m.]: I draw to the attention of the House the outstanding results achieved by many teachers in New South Wales over the past 12 months. Last week an OECD study revealed that the reading literacy levels of New South Wales 15-year-old students are among the best in the world. That result was due to the efforts of teachers, obviously with the support of their students. Teachers deserve to be acknowledged for their good work. Each year I have acknowledged the excellent work of teachers in New South Wales, in particular in the creative areas such as Art Express, the Schools Spectacular, sport, debating, public speaking and vocational training.

This year teachers have faced challenges in many other areas that we should rightfully recognise. This year the Government introduced a new higher school certificate which resulted in enormous challenges for many teachers, partly because of the haste with which it was introduced and partly because of lack of appropriate texts and other resources. Much of what was promised for the higher school certificate examination was not delivered, for example examination papers consistent with specimen papers. We are yet to learn the full ramifications of that, but I predict that in the next six weeks there will be an ongoing saga arising out of the examination, because many students will have been disadvantaged.

In the past year teachers have had to cope with a review of the syllabus for years 7 to 10 and the introduction of new courses. In that time there has been a focus on some of the stresses that teachers face, including the loss of work time. A number of apprehended violence orders have been issued involving teachers and there has been an increase in the number of weapons found in schools. This year many students have been described as having attention deficit hyperactivity disorder, a condition that was not recognised a few years ago and is not well acknowledged by the Department of Education and Training even today. All of that impacts on teachers in their classrooms. This year teachers faced other challenges, not all of which have been recognised by the Government.

Teachers who have been moved to country areas have had difficulty in finding suitable housing. In the past couple of weeks teachers in far western New South Wales have expressed concern about the lack of adequate housing for up to 17 new teachers in one area. Earlier this year teachers faced the problem of the Teacher Housing Authority wanting to take away their furnished units. I am pleased to note that that authority has had a change of heart. Many other issues have impacted on country teachers. Twelve months ago a recommendation was made to the Government by which it could support young teachers, of whom, unfortunately, we lose too many each year. The Ramsay review on quality teacher education proposed that the Government introduce better induction training for first-year teachers and better mentoring for all teachers, particularly young teachers.

In my view not all of the Ramsay report needed to be reviewed, and its recommendations should have been announced as initiatives for this year, or certainly for next year. We are still waiting; the Government has not yet given a commitment to implementing those recommendations. I welcome the decisions that the Government has made about scholarships in support of teachers, particularly those in country areas. I welcome the announcement that this year some teachers in country areas will be given a special pay loading as well as the opportunity for a priority transfer. That option has always been a feature of teaching, but the other new proposals are welcome.

Teachers do a spectacular job in an era in which many are asked to act as parents or counsellors and to take up many issues that ought to be addressed by families or others. But in the end, that lot falls to teachers, and often they receive no thanks for it. From time to time we should stop and think about the value and importance of teachers. To have good outcomes we have to have good teachers. The work in California of Linda Darling-Hammond on the impact that quality teachers make on quality outcomes should not be ignored. In reviewing the Ramsay report, the Government was moving in the right direction, but slowly. We need an indication of the recommendations from the Government. Good luck and thanks to teachers. [*Time expired*.]

DEATH OF Mrs NORMA HALL

The Hon. Dr PETER WONG [10.49 p.m.]: I draw to the attention of the House the case of Norma Hall, whom another honourable member of this House spoke about a couple of days ago, particularly in reference to the way she died. The death of Norma Hall was, indeed, a tragedy. It highlighted the fact that we need to understand more about dying patients, their physical and spiritual needs. It also highlighted our duty to care for those who are living in fear and despair during their hour of darkness. I also make this speech tonight to set the record straight and, in doing so, to dispel the impression that somehow Norma Hall did not receive good and appropriate treatment from her physicians and members of the palliative care team.

Mrs Norma Hall was a 72-year-old Coogee woman who was suffering from small-cell lung cancer that had spread to her liver, bones and lungs. Chemotherapy treatment was suggested to her. The treatment would have had the ability to prolong her life, but most likely it would not have killed her cancer. Mrs Hall was already very weak, and she declined the treatment. It was probably a wise choice. After the decision was made, Mrs Hall expressed the view that it was not worth living in her then weak condition. At that time Mrs Hall was living at home and she was still able to walk and converse coherently with her family.

In cases such as this, a palliative care team would usually advise the patient and his or her family that priorities and goals would change if they had extensive cancer. One could not run a marathon, but one could still go to the beach and enjoy other activities in life. Lifestyle changes need to be made, but it certainly would be wrong to suggest, either directly or indirectly, "You might as well be dead." At that stage Norma Hall was neither in severe pain nor in great discomfort. She had no nausea from her morphine medication. She was on a very small dose of morphine, of up to five milligrams orally every four hours, which is equivalent to one to one and a half Panadeine Fortes every four hours.

Mrs Hall was told that she was not likely to die whilst feeling breathless but was most likely to become weaker and sleep more, and that one day she would sleep and not wake up, but would slowly fade away. Mrs Hall was told that when the time came, when she was actually dying, she would be sedated so she would not be aware she was dying. At that time Mrs Hall was not facing imminent death. However, she was informed that one way to speed up her death was to stop eating and drinking. I want to know whether Dr Philip Nitschke concurred with such drastic action. I hope not.

Soon after, Mrs Hall stopped eating and drinking. She became thirsty and had epigastric pain from hunger pangs. Her dry mouth also became uncomfortable. These symptoms became worse and could easily have

been overcome if she had taken even a small amount of food and drink. A palliative care team would commonly advise that quality, and not quantity, is important, and that enjoyment of food is paramount. I believe that Dr Philip Nitschke visited Mrs Hall frequently during the last few weeks of her life. Mrs Hall then developed overflow diarrhoea from constipation, perhaps as a result of her medication, immmobilisation, dehydration and lack of food. I believe that a doctor prescribed Lomotil, an anti-diarrhoea medication, which would have made the constipation and resultant overflow diarrhoea worse. Perhaps I should ask whether that is true. If it is true, I ask whether Dr Nitschke could say who prescribed such inappropriate medication. At last, after almost two weeks of intolerable suffering, Mrs Hall took an overdose of drugs, which ended her life.

The death of Norma Hall is a lesson to all of us. If Mrs Hall had been treated by an experienced palliative care team, she would not have suffered the torture of severe dehydration, intolerable hunger and unbearable thirst, amongst other things. Norma Hall still would have died, but she would have died more comfortably. Again, pain and shortness of breath were never in issue, and they would have been well controlled.

Dying patients are vulnerable, and I, as well as many other doctors, would be loath to interfere in their management while they are under the care of an experienced palliative care team. Doctors should understand their limitations, especially when treating dying patients. I do not believe that nowadays a physician should treat a cancer patient single-handedly without seeking advice from an oncologist or palliative care expert. The tragic death of Norma Hall reminds me of the primary responsibility of a doctor, which is to do no harm.

RAVENSWORTH MEGADUMP PROPOSAL

Ms LEE RHIANNON [10.54 p.m.]: The Greens have received information from a number of concerned community groups concerning a scheme to establish a Sydney waste megadump at Ravensworth in the Hunter region. The groups include Citizens Against Kooragang Abuses, Hunter Dump Watch and Singleton Citizens Group. Despite assurances at six Hunter waste community meetings last year that no Sydney waste would be dispersed in the Hunter region, the scheme has been revived. The Greens believe that the Minister for Planning should reject the proposal of Thiess Environmental Services for Ravensworth.

There are many reasons for that belief. The environmental impact statement contains false and misleading information. Contaminants from the proposed dump could leach into the two creeks that border the site and flow directly into the Hunter River, affecting the livelihood of fishers and oyster growers in the lower Hunter. Pollution from such a dump could end up in wetland areas at Shortland and Kooragang, the Ramsar-status bird sanctuary and the marine nursery at Fullerton Cove. The Government could undertake a range of waste minimisation measures as an alternative, including container deposit legislation. The Hunter region must not become Sydney's dumping ground.

Motion agreed to.

House adjourned at 10.56 p.m.