

# LEGISLATIVE COUNCIL

Thursday 13 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.

## STANDING COMMITTEE ON STATE DEVELOPMENT

### Membership

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

That Mr Costa be discharged from the Standing Committee on State Development and that Mr Tsang be appointed to the committee.

## LIBRARY COMMITTEE

### Membership

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

That Mr Costa be discharged from the Library Committee and that Mr Primrose be appointed to the committee.

## HOUSE COMMITTEE

### Membership

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

That Mr Costa be discharged from the House Committee and that Ms Fazio be appointed to the committee.

## STANDING COMMITTEE ON STATE DEVELOPMENT

### Reporting Date

**Motion by the Hon. John Jobling, on behalf of the Hon. Dr Brian Pezzutti, agreed to:**

That the reporting date for the Standing Committee on State Development inquiry into redevelopment and remediation of the Rhodes Peninsula be extended to 15 April 2002.

## PETITIONS

### Morisset Policing

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

## BUSINESS OF THE HOUSE

### Suspension of Standing and Sessional Orders

**Motion by the Hon. Duncan Gay agreed to:**

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 102 outside the Order of Precedence, relating to an inquiry into local government boundaries in inner Sydney and eastern suburbs, be called on forthwith.

### Order of Business

**Motion by the Hon. Duncan Gay agreed to:**

That Private Members' Business item No. 102 outside the Order of Precedence be called on forthwith.

## STANDING COMMITTEE ON STATE DEVELOPMENT

### Reference: Local Government Boundary Changes

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [11.06 a.m.]: I move:

1. That the Standing Committee on State Development inquire into and report on the impact of proposed changes to local government boundaries in inner Sydney and the eastern suburbs (South Sydney, Leichhardt, Waverley, Woollahra and the City of Sydney Councils), and in particular:
  - (a) the economic impact of the proposed boundary changes on the areas affected,
  - (b) the social impact on the communities affected by the changes,
  - (c) the total value of assets owned by each council in areas that could be affected and the most equitable way to distribute those assets if the boundary changes were to proceed,
  - (d) the extent to which there are differences between the changes recommended by Professor Kevin Sproats in his "Report of an Inquiry into the Structure of Eight Inner Sydney and Eastern Suburbs Councils" and the proposed changes later announced by the Minister for Local Government,
  - (e) whether the Local Boundaries Commission inquiry into the Government's proposals has conformed with appropriate legislative requirements,
  - (f) the need for a plebiscite of ratepayers of affected council areas under section 265 of the Local Government Act 1993.
2. That the Committee report by 31 March 2002.

I have moved this motion, with some reluctance, because the Government has ignored entire communities. Democracy has been forgotten. The motion is necessary because of the intransigence of the Minister for Local Government and the Government as a whole in consulting with communities that would be affected by the boundary changes proposed by the Government. This is a motion not to change the recommendations but to allow people the opportunity to comment. When the Minister for Local Government announced on 15 November the long-awaited Government response to the inquiry and report—which was conducted with integrity by University of Western Sydney academic Professor Kevin Sproats—he stated:

Expansion of the boundaries of the City of Sydney is consistent with Professor Sproats' view that the boundaries should reflect the changes which have occurred in the city in recent years. "

It is a shame that no-one thought to check the accuracy of those statements, because Professor Sproats stated on the ABC's *Stateline* program a fortnight ago that the Government's proposal did not even match the minimalist boundary change approach canvassed in his report. The Minister also stated that the proposal would be referred to the Local Government Boundaries Commission for examination and report, with an expected completion of the boundary redistribution by early next year. What he did not say, and what soon became clear, was that the time frame put in place would allow for absolutely no public consultation, nor for any public submissions to be placed before the commission for consideration of the boundary change proposals. In other words, the boundaries commission process would become little more than a rubber stamp for the Government's intentions. That simply is not good enough.

In addition to this restriction on public input, there has also been the demonstrably unfair situation in which councils were expected to deliver, in less than two weeks, a complete submission to the boundaries commission on their future. That is ludicrous. It is a clear example of the contempt with which the Carr Labor Government is treating communities and councils that will be affected by these proposals. That is why we are moving for this inquiry. The Coalition is seeking to redress an imbalance that could be easily resolved by the Government.

Kevin Sproats did not sit as a boundaries commissioner. He did not sit with a brief to examine the financial and social impact of removing large tracts of a council's area and transferring it to another council. He did not have a brief to examine how assets should be shared or redistributed in the eventuality of a boundary change one way or another. He was not required to report on the impact of boundary changes on remnant council areas—the bits that have been left behind—that is, the areas of South Sydney and Leichhardt councils that will be left behind if the boundary changes go ahead. I will not for one moment take away from the excellent work done by Professor Sproats. He did a great job examining on behalf of the Government and reporting on what he was asked to do.

The Government is now trying to destabilise two major council areas to deliver an expanded empire to its friends at the City of Sydney with little or no public consultation. This inquiry is about looking at matters that were not canvassed in the Sproats report but are relevant in light of the Government's proposals for change. It is about examining issues that the boundaries commission will not look at in great detail and, by virtue of the time span, have been precluded.

I am firmly of the view that when the boundaries commission examines this proposal, its Government-appointed members will do little more than tick the box that tells the Minister to sign on the bottom line. There has been no consultation. There has been no public input, and that is a travesty. Both South Sydney and Leichhardt councils have launched court action against this proposal. They have serious concerns about the impact of this proposal, concerns that focus on the loss of revenue and assets to their respective councils, and proper concerns about the impact of the changes on what will be left of their areas.

They are fully supportive of letting the public have its say in this matter. In fact, 82 per cent of respondents to a South Sydney council poll of 2,000 people supported a poll to decide the issue. That is a hard statistic to ignore. What sort of State are we becoming when local government has to take the State Government to both the Land and Environment Court and the Supreme Court in an attempt to restore democracy and people's ability to have a say in their future?

The costs of that action to councils and their ratepayers could easily have been avoided if the Government had allowed public consultation in the first place. It has been dragged kicking and screaming into the courts on this issue, which is a fair indication of the reluctance of the Australian Labor Party to have this matter properly scrutinised. If the Government will not allow a proper examination of this proposal, it is our duty as elected representatives in what is supposed to be a House of Review to deliver this inquiry to the people of the affected council areas. I have spoken to some honourable members who are concerned about this inquiry commencing while court action is still under way.

Inherent in this motion, and I confirm now, is that the Opposition is not trying to second guess or interfere with the court actions that are proceeding in the Land and Environment Court and the Supreme Court. I indicate to the House that, although I do not believe it is a problem, if that is a major concern, I, and I am sure all honourable members, will be happy to defer the inquiry until after those cases are decided. I also hope that the Government will agree to defer a recommendation to the Governor on these boundary change proposals until such time as the inquiry is complete. That is an undertaking that has been given in the courts in the past two weeks, and it is not a huge undertaking to give to the Parliament.

I stress again that this inquiry would not have been necessary had the Government done the proper thing and allowed a full public inquiry in the first place. These are major proposals—not just a readjustment of boundaries—that are akin to amalgamation. They have not been subject to an inquiry, and that is why this inquiry is essential. I look forward to support for this inquiry, and I commend the motion to the House. I certainly hope honourable members will support the motion.

**The Hon. AMANDA FAZIO** [11.17 a.m.]: The Government opposes the motion. By way of background, Minister Woods announced a public inquiry in November 2000 to examine the local government structure of eight inner city and eastern suburbs councils—Sydney, South Sydney, Leichhardt, Waverley, Woollahra, Marrickville, Randwick and Botany Bay. University of Western Sydney academic Professor Kevin Sproats undertook the inquiry, which received more than 450 submissions and held public hearings for two weeks. The inquiry followed a number of petitions calling for boundary changes as well as two previous reports—the 1987 Goran report and the 1998 Fisher report—which also advocated an expanded City of Sydney. The Sproats report was handed down in May, with the key recommendation of the eight councils being recast into four new entities.

The Government said it would not be pursuing this option without the support of all the councils, in line with the Government's no-forced-merger policy. Professor Sproats also canvassed a series of alternatives to this recommendation which he said the Government could initiate. He described these as the minimalist approach. The final proposal of Minister Woods mirrored those boundary changes with two changes—the inclusion of the University of Sydney and Chippendale into an expanded City of Sydney. The Government also said it would not pursue, at least at this stage, suggested boundary changes involving the port and Sydney Airport. As required under the Local Government Act—introduced by the former Coalition Government in 1993—the Minister referred the proposal to the independent Local Government Boundaries Commission for examination and report.

The motion of the Hon Duncan Gay seeks to inquire into the economic impact of proposed changes. But under section 263 of the Local Government Act, the boundaries commission must consider the financial advantages or disadvantages, including the economies or diseconomies of scale, of any relevant proposal to the residents and ratepayers of the areas concerned. A parliamentary inquiry would therefore duplicate the boundaries commission work.

The motion also calls for an inquiry into the social impact on the communities affected by the changes. Under section 263 of the Local Government Act the boundaries commission must consider, among other things, the community of interest in the existing areas and in any proposed new area, as well as existing historical and traditional values. As to the total value of assets owned by each council in areas that could be affected and the most equitable way of distributing those assets if the boundary changes were to proceed, when the Minister announced the proposed changes in October he outlined a series of principles that would guide future transitional arrangements. This involved the transfer of assets, liabilities and staff.

The motion would also have the inquiry examine the extent to which there are differences between the changes recommended by Professor Sproats and the proposed changes announced later by the Minister for Local Government. However, the Minister made it quite clear in May—and he has done so many times since then—that, although the eight-to-four proposal would not go ahead without the support of the councils concerned, there would be reforms as a result of the Sproats report. In his press release issued on 6 May the Minister said:

I will ask them—

that is the councils—

to report back to me on the council's position by no later than June 4. Until I receive that advice, it would be premature to determine the State Government's response to the other recommendations of the report, including the options for minimalist boundary change.

It is strange that the councillors are acting so surprised when the Minister partly adopted the minimalist boundary approach put forward in the report. The Minister has made no secret of the fact that there have been some modifications to the Sproats "expanded city of Sydney" option—namely, the addition of the University of Sydney, Royal Prince Alfred Hospital and Chippendale to the City of Sydney council.

The motion also asks whether the Local Government Boundaries Commission inquiry into the Government's proposals has conformed with appropriate legislative requirements. Honourable members are assured that the boundaries commission is carrying out its functions under the Local Government Act 1993. Its powers are very defined and it is acting according to provisions of the Act when considering boundary changes. As to the so-called need for a plebiscite of ratepayers under section 265 of the Local Government Act, under that section the boundaries commission may conduct in such a manner as it thinks appropriate an opinion, survey or poll of residents and ratepayers. The boundaries commission, not the Government, must determine whether to undertake a survey. Neither the Minister nor Parliament can force the independent boundaries commission to conduct a survey or poll as provided in section 265.

I ask honourable members to take careful note of the fact that boundary changes are treated differently from mergers under the Act. Boundary changes occur regularly in New South Wales and the provisions in the Act are very clear and decisive. Since the Minister's announcement in October, South Sydney and Leichhardt councils have been fighting the proposed changes in the courts—at what must be a huge expense to their ratepayers. South Sydney Council has taken action in the New South Wales Land and Environment Court, while Leichhardt Council is fighting the changes in the New South Wales Supreme Court. It is totally inappropriate for a parliamentary inquiry to pre-empt these court proceedings.

Council boundary changes occur regularly in New South Wales without a ruckus. Federal and State electoral boundaries change regularly without a ruckus. The Sproats report has been in the public arena since May this year, and three reports since 1987 have recommended the action that we propose. We have also received petitions from residents keen for change—an opinion that is mirrored in current correspondence to metropolitan newspapers. The Deputy Leader of the Opposition wants another inquiry even though the boundaries commission is already examining the issues that he has raised in his notice of motion. This inquiry would also be in addition to the lengthy Sproats public inquiry. Furthermore, these matters are now before the courts. The House should at least await the findings of these proceedings and not pre-empt either court's deliberations or the boundaries commission's process. I urge honourable members to reject the Deputy Leader of the Opposition's motion.

In conclusion, I will respond to several issues raised by the Deputy Leader of the Opposition in moving this motion. He claims that there has been no consultation about this matter. However, the Sproats inquiry into the possible amalgamation and review of the structure of the eight councils, which led to this proposed course of action on the part of the Government, received more than 450 submissions and conducted two weeks of public hearings. It is simply not true that there has been no consultation. It has not been sprung on the public suddenly.

The Deputy Leader of the Opposition also claimed that 82 per cent of residents polled supported a plebiscite on this issue. That statement is an insult to members' intelligence. There is no point in the Deputy Leader of the Opposition citing those figures unless he tells us how the poll was conducted, what questions were asked, and whether leading questions were put. He might as well come into this place and claim that 82 per cent of the population think the sky is purple. It is clearly not, but if we ask people enough silly questions in the poll preamble, we will elicit that response.

It is a nonsense to say that these changes are akin to amalgamation. They are boundary changes, and eight councils will remain in the inner-city area. The Deputy Leader of the Opposition suggested that we wait until the court decisions have been made. If he believes that, he should withdraw his notice of motion, return to the issue after the boundaries commission inquiry and the court actions have concluded and put it before the House again. I urge all honourable members to oppose the motion of the Deputy Leader of the Opposition.

**Ms LEE RHIANNON** [11.25 a.m.]: The Greens support the motion and we warmly congratulate the Deputy Leader of the Opposition on putting it before the House. The Greens are deeply concerned about amalgamations and changes to boundaries that do not have strong community support. That is why we think this inquiry is necessary. The success of local government is determined in some measure by the degree to which the local community identifies with its municipality and its council. The community benefits of strong identification are massive. Strong local government can address the alienation from other levels of government that characterises so much of the current political debate in this country.

Therefore, it is a matter of great concern when State governments start messing with the structure of local government. One would expect the Carr Government to have learnt something from the Victorian experience. What could happen in New South Wales has already happened in Victoria under the Kennett Government. That is the worst-case scenario. Ostensibly designed to increase the efficiency of service delivery, Victoria's so-called reforms largely destroyed the culture of local government and reduced councils to simply being administrators of State policy, with little connection to their communities.

That is why we emphasise that the strength of local government must be its connection with the local community. That connection will be shattered if amalgamations such as this are allowed to proceed. In recent years the situation in Victoria has improved, with newer councillors making an effort to break through the Kennett mess and re-establish connections with the community. I pay credit to those councillors and communities for their efforts, which demonstrate their resilience.

Much of the debate in Sydney has revolved around the notion of efficiency—a word we are hearing more and more from Labor Ministers from both the left and the right of their party; it seems to be their favourite word. Many arguments centre around the fact that councils must be enlarged in order to deliver services more efficiently. The spin is that the Government is concerned about service delivery to the public, but the real issue is control and power. Some groups view the connection between communities and councils as a threat to their ability to control the situation. This is the background to the Sproats inquiry. While the amalgamation push was not a stated objective of that inquiry, we knew that it was in the wings—and Sproats did not disappoint us. The recommendation was made and the Government has acted on it quickly.

The value of empowering local communities was relegated to a poor second by the Sproats inquiry, which underlines our point about its main objective. The Government did not anticipate such a level of community reaction to Professor Sproats' outrageous proposals. Governments that are out of touch with the community often do not bank on how hard it will be for them to pass some of their dodgy proposals without enraging the public. That is what is happening at the moment. Community discontent is particularly reflected in the well-attended public meetings on the amalgamation of various municipalities around Sydney. It has become clear to the Minister that devastating local government in the inner city could be a political mistake. I think the Minister is still trying to come to grips with that fact. The Greens congratulate the communities on the fight that they are putting up.

Many Greens councillors and local people are working with these communities to help them articulate their position to the developer-compliant councils. Effectively, that is what Professor Sproats is putting forward.

It was to be hoped that some lessons would be learned as a result of this exercise. The Minister, who persisted in riding roughshod over local communities, announced a wholesale movement of communities into Sydney city. That will really fracture those communities. Anger is building up in those communities and that is an issue that must be addressed. The Greens support the establishment of this inquiry. It will give these people a voice at this crucial time before they are pushed into councils where they do not fit in naturally.

While some of the Minister's suggestions may have some merit, the significance and sensitivity of local government makes further consideration essential. I appeal to the Government to be sensible on this issue and to allow the inquiry to go ahead. The Greens support the incorporation of Bondi Junction into Waverley as a sensible step forward and one that involves the movement of a few residents and only a few businesses. That move provides for the sensible and orderly redevelopment of public space and for better development control on private space. So far as I know, apart from the Mayor of Woollahra, there has been almost no public opposition to that aspect of the Sproats inquiry. The other boundary changes, which are much more controversial, deserve more attention.

This wholesale movement of community boundaries will place at risk the special values of local government. A number of political parties see local government as a training ground for higher office. Sometimes that factor clouds their judgment when they have to decide what is best for local communities. Interestingly, some of the arguments for amalgamation came from organisations that have a vested interest in weakening the democratic power of the community. Tourist operators and developers use the urban environment to make profits, usually at the expense of amenity and environmental quality. It does not have to be that way. The fact that one tourist operator or developer is making money does not have to result in damaging the environment. However, that is a factor at the moment—a factor about which we must be mindful—and that is why local government must be strong.

The acid test is this: How would politicians in New South Wales view an attempt by the Federal Government to move, say, the Murrumbidgee Irrigation Authority into Victoria or the Richmond-Tweed district into an expanded Queensland? There would be outrage, there would be speeches all day in this place, and we would consider it absolutely unacceptable. It is a tragedy of disrespect for local government. The principles that we apply in relation to the integrity of boundaries do not apply when we are dealing with local government. The Greens support the motion moved by the Deputy Leader of the Opposition. I hope that this inquiry proceeds quickly and that it allows for a more open and democratic consideration of these proposed boundary changes. I again congratulate the Deputy Leader of the Opposition on moving this motion. I hope that it will help to break up the logjam that is developing in relation to this issue at the moment.

**The Hon. HELEN SHAM-HO** [11.34 p.m.]: In speaking in debate on this motion I declare an interest in or a potential conflict relating to this issue. All honourable member are aware that my husband, Robert Ho, is a councillor on Sydney council. However, he does his duty impartially, just as I do. I support the motion moved by the Deputy Leader of the Opposition to refer these proposed boundary changes to the Standing Committee on State Development. I state at the outset that I will not speak about the substance or merits of the Sproats inquiry or the Local Government Boundaries Commission inquiry as I am not aware of the reference and I have not read the Sproats report.

**The Hon. Duncan Gay:** It is a good report.

**The Hon. HELEN SHAM-HO:** I take seriously the word of the Deputy Leader of the Opposition, just as I took seriously his contribution to this debate. There is no reason why the Deputy Leader of the Opposition would mislead the Parliament. As I have done no research on this issue I will talk only in general terms about this process. I received a memorandum from the Deputy Leader of the Opposition only this morning and I have not had adequate time within which to peruse that document. It is my view that the proposed reference to the Standing Committee on State Development would be a good reference. The Deputy Leader of the Opposition said earlier that it was important to have community consultation and input in relation to this issue.

I have ascertained, after listening to debate and reading newspaper articles over the past few weeks, that the community is not too happy about these changes. When two local council mayors recently spoke to members on the crossbenches they said that they did not like these proposed council amalgamations or boundary changes. Mr John Fowler, South Sydney City Council Mayor, called me just before we commenced proceedings this morning and strongly supported the motion of the Deputy Leader of the Opposition to refer these matters to the Standing Committee on State Development. He said that he had no problem with proposed changes to the City of Sydney but he believed that there should be more consultation.

Mr Fowler told me that an action was pending from South Sydney City Council and that the Local Government Boundaries Commission gave him only five days within which to make a submission, which is not fair. Apparently he should have had 40 days within which to prepare a submission. It takes time to obtain material and to prepare a proper submission. Mr Fowler also said that the hearing was scheduled for Friday. Earlier, the Hon. Amanda Fazio suggested that we should not proceed with this matter until that hearing had been concluded. As the parliamentary session concludes tomorrow we will not be in a position to again address this issue, so the honourable member's suggestion was not really practical or realistic.

I said earlier that I would not talk about the merits of the inquiry conducted by Professor Kevin Sproats, whom I believe to be fairly impartial. As the Deputy Leader of the Opposition said earlier, Professor Sproats' report is a good report. Ten minutes before I came into the Chamber this morning I received a letter from the Minister for Local Government, the Hon. Harry Woods—a letter to which the Hon. Amanda Fazio referred earlier. That letter states, in part, that the Sproats inquiry received 450 submissions and advocated an expanded City of Sydney. I quote from that letter dated 13 December from the Hon. Harry Woods:

The Sproats report was handed down in May, with the key recommendation of the eight councils being re-cast into four new entities.

The State Government stated that it would not be pursuing this option without the support of all the councils in line with the Government's no forced merger policy.

If the Government does not have a no forced merger policy, the councils will not be happy. The eight councils that were mentioned, Sydney, South Sydney, Leichhardt, Waverley, Woollahra, Marrickville, Randwick and Botany Bay, are up in arms about this particular Government proposal. I called the Minister's office, which was the reason I was late to the Chamber, and spoke to the Minister's Chief of Staff. I asked him to explain the reason for this proposal. I gave him an open slate to tell me what was going on. I understand that my decision is my prerogative. I quoted to him the following from the Minister's letter:

The final proposal I announced in late October was not inconsistent with the boundary changes—the only addition being the inclusion of the University of Sydney, RPA Hospital and Chippendale into an expanded City of Sydney.

I have been around for a long time and I know that a recommendation is followed because it is an outcome of a finding. But a change, even a small addition, is not a recommendation. I said to the staffer that a new addition is not a recommendation, and I was told that it was "a Cabinet decision". If it was a Cabinet decision that means there was no community input; it was not a recommendation of the Sproats inquiry and received no real support from the people. I thought it was strange for him to say that because he was contradicting himself on that point. I thought I should enlighten the House about that inconsistency with the Government's claim that it is what the public wants. I believe it is not what the public wants, but it is probably what the Lord Mayor of Sydney wants. I know the Lord Mayor very well; he is a strong character and will do everything within his power to achieve what he wants.

**The Hon. Dr Brian Pezzutti:** He has a Napoleonic view of the world. He is trying to increase his empire.

**The Hon. HELEN SHAM-HO:** I have known Frank Sartor for a long time. I do not know whether he thinks he is Napoleon Bonaparte, but certainly the Government supports the Lord Mayor's views. He has not talked to me about it, so I do not know his views.

**The Hon. Dr Brian Pezzutti:** He does not support the Labor Party.

**The Hon. HELEN SHAM-HO:** I have not discussed anything with my husband, Robert Ho, who is a councillor on the City of Sydney council.

**The Hon. Dr Brian Pezzutti:** Why not? He's a member of the Labor Party.

**The Hon. HELEN SHAM-HO:** That is why I declare my interest. He might be a Labor Party member and a councillor of the City of Sydney, but I do not necessarily vote in favour of what they want. That is the reason I am speaking now in the House. I have to carry out my duty impartially and analyse the way I should vote. I want the House to know that the reason I vote this way or that way is that I want transparency. As members of Parliament we carry out our duties according to what we believe is the right thing to do. That is exactly what I am trying to do. I will not take up the time of the House as many other members want to speak to this motion, but I agree that it should be referred to the Standing Committee on State Development. I have every

respect for the standing committees of this House because they are always impartial and do a wonderful job. However, after speaking to Mayor John Fowler, my only reservation is that this particular standing committee, like all other standing committees, has a majority of government members. I raise that point, but I have faith and confidence in the committees.

**The Hon. Duncan Gay:** I think it will be fair.

**The Hon. HELEN SHAM-HO:** Yes. To be fair to all of our standing committees, I believe they all do a great job. I look forward to the state development committee publishing its report in March.

**Reverend the Hon. FRED NILE** [11.44 a.m.]: I support the motion moved by the Deputy Leader of the Opposition. I propose to move an amendment to it, but I make it clear that supporting the motion does not mean that I automatically oppose what the Government proposes. We must fully understand and comprehend that proposal. Perhaps the House will finally agree in principle to the proposals of the Minister, the Hon. Harry Woods, who has written to all crossbench members stating that we should not support the motion. I see some positive values in supporting the motion, which may help clear the air to allow final support for the Government's proposal in due course. As other speakers have said, the earlier inquiry by Professor Kevin Sproats recommended amalgamation of the eight councils into four. That is a major change to the Government's proposal and it involves two different propositions. One main objection the Minister raised with the crossbench was that court cases were proceeding. For that reason I move:

That the question be amended by the addition of the following paragraph at the end:

3. That, in view of the current proceedings in the Supreme Court and the Land and Environment Court, the Committee not commence its inquiry until a judgment is given in those proceedings. The Committee, in its inquiry, is to have regard to any decision of those Courts impacting on the proposed boundary changes.

**The Hon. RICHARD JONES** [11.46 a.m.]: I support the motion of the Deputy Leader of the Opposition. This House should inquire into the matter. I was a member of this place when the Deputy Leader of the Opposition was a member of the previous Coalition government, and I recall that we went through the process of dismantling the City of Sydney. At that time I moved a number of amendments to the legislation and was negotiating with Frank Sartor to try to keep the city together. John Hannaford was babying the legislation through the House. At one point he said that he would be prepared to keep the City of Sydney together. What happened was that the Labor Party caved in to ensure that the City of Sydney was divided up. If the Labor Party had stood firm on my amendment at that time the City of Sydney would have been a more integral place. However, rather than rushing the proposal through, a proper inquiry is needed to discover what the boundaries should be. I totally agree that an inquiry should be held.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.47 a.m.]: A number of changes are needed in Australian government. Australian Democrats policy is to abolish the States and regionalise government. Government needs to be more representative and not based on single-member electorates, which allows gross distortions of parliamentary representation relative to voting patterns. Obviously, some local council reform is needed. When the Local Government Act was debated in this place, the crossbench and the Opposition insisted that referendums should be held. Unfortunately, the Government did not want to accept that proposal. I understood from the way the bill was drafted that referendums would be needed. The Government said there would never be any change if referendums were necessary. That is like saying society would still be living under autocracy long after choosing the processes of democracy. That is an absurd proposition.

Basically, if we truly want government of the people, by the people and for the people, we have to talk to the people and convince them that what is proposed is a good thing. I do not believe the Government's proposal is a good thing. I do not understand the reasons for these proposed boundary changes. I think that councils are being punished because Independent members were returned, and council rating bases are being viewed politically and vindictively. I cannot find any good reason, nor have I heard any good explanation, for this proposal. Certainly public discussion has not been as extensive as it should have been. The interview on *Stateline* with Commissioner Kevin Sproats, who wrote the report, made the matter very clear. He said:

I recommended that they recast local government into four new areas with respective responsibilities, different perspectives, different strategies. And that's in essence what the report was.

Sproats said:

I thought there was a significant opportunity, an impetus to do something and it seems that at least in the short term that that's been lost. That here was an opportunity to do what has been recommended before and that is to recast that area. And the very key



area that I made the mention of is that here is an opportunity to advance reform of local government in the whole State. Because there are other areas that need to be looked at and here was a mechanism for doing it and a model perhaps that could be used. And to that extent, I'm disappointed that that's not happened.

He was asked:

As a proudly independent commissioner, are you not ... disappointed that your name is being attached to what has been sold by government?

Sproats replied:

Well, I mean, if the government is saying that that's what I recommended, then obviously I'm disappointed ... because that's not what I recommended.

I quote Sproats again:

The Government has made its determination and it's not the boundaries that ... even the boundaries that I canvassed in that latter part of the report as an alternative. They have made their decisions, they have got their advisers. But they're certainly in a position to make that determination but certainly it's not the ones that I had recommended.

I have nothing against Frank Sartor. He has more vision than most people and has done a lot of good for Sydney. It is fair enough that he wants to increase his council area—who would not? But South Sydney council will lose about 45 per cent of its rating base, the proposal to reduce eight councils to four seems to lack overall vision, and a sound rationale has not been offered. This all sounds very much like the Government making policy on the run for its own convenience. For that reason I support an inquiry and, as I think the due process of the court should not be interfered with by a double inquiry, I will support the amendment.

**The Hon. Dr PETER WONG** [11.51 a.m.]: I support the motion moved by the Deputy Leader of the Opposition. Also I will be supporting the amendment moved by Reverend the Hon. Fred Nile.

**The Hon. DON HARWIN** [11.51 a.m.]: There are two reasons why I believe the House should support the Deputy Leader of the Opposition's motion. It is a complete nonsense to describe, as the Hon. Amanda Fazio did, that the proposal is about a mere boundary change. The fact is that South Sydney council, for example, is losing more than a third of its population and more than half of its rating base. The process the Government has undertaken has identified real flaws in the Act. This is a totally new boundary proposal, and despite the Sproats process people have had no opportunity to comment on it. The Act provides 40 days for people to lodge submissions. The commission has delivered much less.

To give the complete lie to what the Hon. Amanda Fazio has said, one only has to recall what is on record in *Hansard* from the Leader of the Government, who himself has evidenced considerable dissatisfaction with the boundary outcome. The second reason is that, from the timetable the Government is adopting, the Local Government Boundaries Commission proposes to ignore the consultation provision that this House put in the Act only last year. For that reason, the Deputy Leader of the Opposition's motion should be supported.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [11.53 a.m.], in reply: I thank honourable members for their contributions. One has to wonder what the political rush is for this. Ms Lee Rhiannon's comment that the Government should have looked and listened to what happened in Victoria before the last election is appropriate. The Hon. Amanda Fazio said that boundary changes are happening all the time, and that they can be as minor as transferring a small part of a property to another council. These changes will not move a small part of property to another council. As many honourable members have indicated, the proposed changes are huge and they need public input. That is the problem. Sproats was not the boundaries commission. He did not look at the economic impacts, nor did he look at the impact of the changes on these particular remnant areas.

A public inquiry would not replicate the boundaries commission, because the boundaries commission is not having public input. That is the way the Minister for Local Government set this up. In this case the committee would do a better job. The commission has no public input and a very limited time frame. Rather than my carrying on in reply following other contributions, I leave the final say to the Inner Metropolitan Regional Organisation of Councils [IMROC], which is made up of the councils of Ashfield, Burwood, city of Canada Bay, Lane Cove, Leichhardt, city of South Sydney and Strathfield. On 6 December that organisation wrote to me saying:

Dear Mr Gay

... At the Annual General Meeting of the Inner Metropolitan Regional Organisation of Councils on 22nd November 2001, the following resolution was passed unanimously:

"That IMROC expresses concern for any forced boundary changes or 'backdoor' compulsory amalgamations of South Sydney, Leichhardt or Sydney City Councils and supports all efforts of South Sydney and Leichhardt Councils to apply rigorous scrutiny and thorough community consultation to any boundary changes".

As President of IMROC, I express the support of our Organisation for South Sydney and Leichhardt Councils in their wish for a comprehensive process of community consultation before any of the proposed boundary changes take place.

Yours sincerely

Cr Mark Bonanno  
President, IMROC

He is a Labor man, not a member of the National Party. This is Labor people saying that they would like the public to find out. That is what this House is about. In conclusion, I indicate also that the Waverley and Woollahra matter needs to be looked at. I was incorrectly quoted in the *Southern Courier* and in my own time I will put a letter in about that. I thank honourable members for their indicated support and commend the motion to the House.

**Amendment agreed to.**

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

**The House divided.**

**Ayes, 21**

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

**Noes, 10**

Mr Costa	Mr Obeid	<i>Tellers,</i>
Mr Dyer	Ms Tebbutt	Ms Fazio
Mr Egan	Mr Tsang	Mr Primrose
Mr Hatzistergos	Mr West	

**Pairs**

Mr Colless	Dr Burgmann
Miss Gardiner	Ms Burnswoods
Mr Lynn	Mr Della Bosca
Mr Ryan	Mr Macdonald
Mr Samios	Ms Saffin

**Question resolved in the affirmative.**

**Motion as amended agreed to.**

## QUESTIONS WITHOUT NOTICE

### INDEPENDENT COMMISSION AGAINST CORRUPTION PERSONNEL AUDIT

**The Hon. MICHAEL GALLACHER:** My question without notice is to the Leader of the Government. To preserve public confidence in the Independent Commission Against Corruption, will the

Treasurer give an undertaking to call for an audit of all ICAC personnel to ascertain whether any of them have links to registered political parties? Will the Treasurer give a commitment to the House that in the future no members of political parties will be involved with ICAC investigations into members of Parliament, as occurred with the investigation concerning the alleged incidents at Cecil Hills High School?

**The Hon. MICHAEL EGAN:** I would not for one moment accept on the face of it any assertion contained in the honourable member's questions. I will take advice on the question and come back with a reply at a later date. However, I emphasise what I think is a sensible principle: People who participate in Australian political and civic life should not lose all of the other rights of citizenship.

#### NEW SOUTH WALES POLICE COLLEGE GRADUATES

**The Hon. PETER PRIMROSE:** My question without notice is to the Minister for Police. What is the latest information regarding police recruitment?

**The Hon. MICHAEL COSTA:** I thank the honourable member for this important question, in which I know the Opposition has some interest, given the questions I have been asked over the past week about this matter. Training for new police recruits is a critical matter. Next week's attestation ceremony at the New South Wales police college in Goulburn highlights a number of training issues. I am advised that historically the attrition rate at the college is about 20 per cent. That figure is unacceptably high.

**The Hon. Michael Gallacher:** Which is a figure you laughed at in the last couple of days. Is this a personal explanation about your misleading the House? Remember when we asked you the question? You thought it was the worst thing in the world!

**The Hon. MICHAEL COSTA:** Have you finished?

**The Hon. Michael Gallacher:** No, we have not finished—

**THE ACTING-PRESIDENT (The Hon. Tony Kelly):** Order!

**The Hon. MICHAEL COSTA:** We still have record numbers of police. We will continue to have record numbers of police, and it grates. It grates! That is why today I have announced that the training of new recruits will be a priority for the police Minister's advisory council. I have put that matter on the agenda for the meeting next Wednesday. I make the point that the current crop of students who will graduate from the academy are on top of a historic number who have already graduated this year. Some 234 police graduated from the academy in May, and another 282 graduated in August. This year will see a record number of new police in the Police Service. A 20 per cent attrition rate for academy recruits is disturbing, and we will be looking at that. Despite all the issues raised by the Opposition and others—

**The Hon. Michael Gallacher:** Which you scoffed at.

**The Hon. MICHAEL COSTA:** And I scoff at it again because it is absolute nonsense. The figure that counts is the final figure for police numbers, which are at record levels. We have 1,000 new police, and we will continue to have record budgets and record police numbers. The Opposition spends its time in this Chamber continually harassing and attacking the fine young recruits in the police academy. The reality is we have record numbers of police. I will say it again—record numbers of police. We have record budgets and record activities in policing. This Government has delivered in policing and will continue to deliver in policing.

**The Hon. John Ryan:** Point of order: I am having difficulty hearing the Minister as he gags on the crow's feathers.

**The ACTING-PRESIDENT (The Hon. Tony Kelly):** Order! That is not a point of order. I advise members that I am having difficulty hearing the Minister because of the number of interjections, which under the standing orders are disorderly.

**The Hon. MICHAEL COSTA:** As I was saying, we have record numbers of police in this State. We will continue to have record numbers and, with the graduation next Friday, those record numbers will reach new highs—record numbers that the Coalition has never attained. We have record budgets, half a billion more dollars in policing. The Opposition is bankrupt of policies and does not understand—[*Time expired.*]

**The Hon. PETER PRIMROSE:** I have a supplementary question. Will the Minister elaborate on the record numbers of police?

**The Hon. MICHAEL COSTA:** It really grates on the Opposition to have to listen to me announce these record numbers of police. They sit there, people who have no policies. Howard wants 15 good candidates. Their own leader has told them they have absolutely no policies and are not worthy of being candidates in the seats the Coalition thinks it can win at the next election. The reality is we have a record number, 234 police in May, 282 police in August, and we will have a significant number of police next week, which means another record for the Carr Government in police numbers. It is another record and members of the Opposition sit there in despair because they know this campaign is going absolutely nowhere. There are record numbers of police, crime rates are under control and the Opposition is struggling.

**The Hon. Michael Gallacher:** You are struggling, not us.

**The Hon. MICHAEL COSTA:** He is struggling. Look at the Leader of the Opposition! He has not one argument, not one policy, and yet he ridicules record police numbers. He ridicules the people who are going into the Police Service. The Opposition has no policies, no ideas and no future; I would like to finish this parliamentary session on that theme. It is little wonder Howard wants 15 new candidates. I can count them over there. You are all gone! You have no policies, no future and no hope. We have record numbers of police. As I was saying, 234 police in May, 282 in August and another record this month—what a record for the Carr Government in policing.

#### CHEMICAL SENSITIVITY SUFFERERS TOURIST FACILITIES

**The Hon. ALAN CORBETT:** I address my question to the Treasurer, representing the Minister for Industrial Relations, who represents the Minister for Tourism. Is the Minister aware that an estimated 12 per cent of the population of New South Wales has a chemical injury or sensitivity? Is the Minister further aware that many people with this disability find it difficult, and in some cases impossible, to tour New South Wales because of the lack of safe accommodation for them? Will the Minister take up the issue with the tourism industry so that that industry will cater for people with this particular special need, just as it caters for people with other disabilities? If not, why not?

**The Hon. MICHAEL EGAN:** I thank the honourable member for his question on what is obviously an important issue. I will refer his question to the Minister for Tourism for her consideration and response.

#### ELECTRICITY DISTRIBUTORS ASSET STRIPPING

**The Hon. DUNCAN GAY:** My question is to the Treasurer. Is the Treasurer aware that the Auditor-General's latest report confirmed that the Treasurer has extracted a total of \$3 billion from the State-owned electricity generators and distributors in an attempt to shore up the budget bottom line? Can the Treasurer inform the House how these companies are expected to both maintain a profit and provide increasing dividends to the taxpayers of New South Wales at a time when he is intent on stripping as much money as possible from those companies in order to make his overall budget figures appear more sound?

**The Hon. MICHAEL EGAN:** The Deputy Leader of the Opposition is a slow learner, because he will be aware that for the last six years the Government has been giving the State-owned electricity utilities a commercial capital structure, a debt to equity ratio, which is in line with their competitors in the private sector. The amount of debt that has been transferred from the general government sector to the commercial business sector is of the order of the amount that the Deputy Leader of the Opposition mentioned. That comes as no surprise, because it has been canvassed in great detail in all of the budget papers and in a number of statements I have made. Where the Deputy Leader of the Opposition shows his ignorance—and it is an appalling ignorance for someone who is the Leader of the National Party in this House and a shadow frontbencher—is in claiming that this in some way affects the budget bottom line. If he looks at the 1995 budget papers, and at the 1996, 1997, 1998, 1999, 2000 and 2001 budget papers, he will see that these capital restructures are excluded in determining the budget bottom line.

**The Hon. Greg Pearce:** That is the point.

**The Hon. MICHAEL EGAN:** They are not taken into account. They do not affect the published budget results.

**The Hon. Greg Pearce:** You like getting \$3 billion, don't you? You spent \$3 billion on workers comp! That is the whole point.

**The Hon. MICHAEL EGAN:** What I am saying, for the benefit of the dumbcluck on the backbench, is that if you take into account the extra \$3 billion to which the Deputy Leader of the Opposition referred, our budget surpluses would have been \$3 billion bigger than we have been claiming.

**The Hon. DUNCAN GAY:** I ask a supplementary question. In light of the Treasurer's answer, would he agree with the commonly held belief that he is a greater asset stripper than Christopher Skase?

**The Hon. MICHAEL EGAN:** I think the Deputy Leader of the Opposition, who has the capacity to be intelligent, is just being quite silly.

#### **JUVENILE JUSTICE CENTRE DETAINEES FAMILY CONTACT**

**The Hon. RON DYER:** My question without notice is to the Minister for Juvenile Justice. What effort does the Government make to maintain contact and support between detainees in juvenile justice centres and their families and carers?

**The Hon. CARMEL TEBBUTT:** Maintaining family and other ties between young people in detention and their family and communities is important to assist with the process of rehabilitation of young offenders. It is well known that maintaining that contact, as well as maintaining community links, assists with the young person participating in rehabilitation programs during the process of detention. It also assists their reintegration into the community when they finish their time. The Department of Juvenile Justice places a high priority on trying to ensure that young people in custody maintain strong bonds with their families. I think it is important to put these issues on the record, because there has been criticism of the department in the other place about the process of assisting families to maintain contact with young people in detention. That is an issue of some concern. Young people in our detention centres are, on average, aged 16, but some may be as young as 12. When they are committed to a detention centre, juvenile justice officers in the community work hard encouraging parents to visit as often as possible.

The maintenance of strong, supportive family bonds is seen as a powerful component in steering young offenders back onto the right path. A major impediment to parental visits by some families can be the cost and difficulty of travel. Often the family has just a single parent tied down by limited funds and a lack of transport. That single parent often also has the care of other children. One of the primary reasons the Government built the two recently opened juvenile justice centres, Orana at Dubbo and Acmena at Grafton, was to house detainees within reach of their families. At the time those centres were planned there was concern about the building of more custodial facilities. But I firmly believe that trainees should be accommodated closer to their families, which is what the facilities at Dubbo and Grafton make possible.

Because of the large number of detainees in the care of the department, they cannot all be accommodated within close proximity to their families, so other steps are taken. The department has established a scheme whereby families suffering severe financial hardship may apply for assistance in meeting the costs associated with visiting a young person in custody. The scheme provided assistance on 328 occasions during the 2000-01 financial year—helping family members with bus, train and taxi fares, as well as accommodation in some circumstances. Yasmar Juvenile Justice Centre is the department's only centre for young women. This exacerbated the difficulty of family members from distant areas of the State maintaining contact with detainees.

The mother of a detainee was unable to afford the considerable expense of travelling from Nowra with the detainee's five-year-old brother to visit the detainee. I am pleased to say that after the mother approached the department and outlined her difficulty the department assisted with the cost of train and taxi fares for the mother and brother to visit the young woman. The detainee was in custody for the first time and was having difficulty adjusting to life in a detention centre. The visit enabled her to adjust and focus on her rehabilitation and eventual return to the community. Another prime example of the system supporting families is the two self-contained accommodation units adjacent to the Riverina Juvenile Justice Centre at Wagga Wagga. That centre services a vast area of New South Wales, so families and carers of some detainees face long travel to visit detainees. The Riverina units are used frequently to house people from as far as Narrandera and Deniliquin. Typically, the occupants are mothers with a number of children. In a four-month period the facility was used on 60 occasions. The travel assistance scheme and the Riverina accommodation units are just two examples of government programs to maintain contact between detainees and their families.

### NATURE RESERVES SCIENTIFIC PROGRAMS

**The Hon. MALCOLM JONES:** My question is to the Minister for Juvenile Justice, representing the Minister for the Environment. Will the Minister please provide details of all scientific programs, and any results, carried out in nature reserves over the past two years?

**The Hon. CARMEL TEBBUTT:** I am sure that some of the information the honourable member has asked for is on the public record. I am not sure what work would be involved in collating that information. I will refer the question to the Minister for the Environment, who will be able to seek advice and respond to the honourable member's question.

### POLICE SERVICE CHARITY AND COMMUNITY SERVICE CHARGES

**The Hon. PATRICIA FORSYTHE:** Does the Minister for Police recall my question of 29 November about the police department's user-pays policy in relation to the use of police resources by charities and community groups? Has the Minister taken advice on the policy as he indicated he would? If so, has he called for a review?

**The Hon. MICHAEL COSTA:** As I said in response to the original question, I have taken the matter on notice and, at the appropriate time, I will provide an answer.

### WALLIS LAKE PRAWNING BAN

**The Hon. AMANDA FAZIO:** My question is to the Minister for Fisheries. What recent action has been taken by commercial fishers to protect prawn stocks in Wallis Lake?

**The Hon. EDDIE OBEID:** I thank my colleague the Hon. Amanda Fazio for her keen interest in protecting our fish stocks. The New South Wales Government continues to work with the community to better manage our fisheries. We need to work together to make sure our fish stocks are managed in a sustainable way so that future generations can continue to enjoy our superb seafood. Working with our commercial fishers is an important part of this management strategy. We encourage commercial fishers to suggest ways to better manage their fisheries. I congratulate commercial fishers operating in the Wallis and Smiths lakes on their latest suggestions to protect local fish stocks. Local fishers and members of the Wallis Lake Fishermen's Co-operative have asked me to implement a number of conservation measures they feel will give greater protection to local prawn stocks.

These commercial fishers should be commended for making decisions that will help protect their livelihood. The Government has certainly listened to their suggestions. At their recommendation, I have approved a three-month ban on prawning in Wallis Lake and its tributaries. Smiths Lake has also been included in the new management plan. The ban means that all estuaries in the area will be closed in June, July and August to commercial prawning. Wallis Lake fishers and their co-operative hope the ban will protect juvenile prawns and allow them to grow during the winter months. They are well aware that large prawns mean better returns. With the winter ban on prawning in the area, local commercial operators are also making sure fewer juvenile prawns are caught in their nets. This will help improve overall prawn stocks and help local prawn fishers get a better price for their catch.

Wallis Lake commercial fishers have also made changes to the use of prawn nets and have worked closely with New South Wales Fisheries to introduce these changes. Since the start of December the minimum mesh size in set pocket nets has increased at the recommendation of Wallis Lake fishers. On the advice of local commercial fishers, the change was delayed to give prawn fishers an opportunity to buy correctly sized nets. We are working together with commercial fishers to address the by-catch. Next year New South Wales Government scientists will test a number of gear modifications designed to reduce by-catch. I congratulate the Wallis Lake commercial fishers on their positive contribution to protecting fish stocks and the environment.

### UNDERGROUND POWER CABLES

**The Hon. RICHARD JONES:** I ask the Treasurer, representing the Premier: Will the Premier give high priority to undergrounding powerlines in vulnerable areas—for example, accident black spots on main roads and areas where trees bring down powerlines? Will the Premier make absolutely sure that his vision for a power pole-free Sydney is actually implemented and ensure that funding is made available whether by a levy on electricity or otherwise?

**The Hon. MICHAEL EGAN:** A week or two ago the Premier announced that he had asked the Minister for Energy, Mr Yeadon, to conduct an investigation into the possibility of undergrounding—

**The Hon. Richard Jones:** Is it only a possibility now?

**The Hon. MICHAEL EGAN:** I refer the honourable member to the Premier's announcement, which made the position quite clear.

#### **MANNING AND TWEED RIVERS FISHING RESTRICTIONS**

**The Hon. JENNIFER GARDINER:** Is the Minister for Fisheries aware of proposals to close the Taree Fishermen's Co-operative due to the Government's closure of much of the Manning River to commercial fishing? What is being done to assist the employees of co-operatives and businesses who will be unemployed as a result of such closures? Specifically, what retraining programs are being put in place to help people displaced from these regional businesses? With respect to the viability of fishing businesses in the Tweed, what is the Minister's advice to the request for the closures to apply to the sea mullet catch during April to August next year?

**The Hon. EDDIE OBEID:** The Hon. Jennifer Gardiner has a fixation about trying to assist employees of the co-operatives. Let me make it quite clear that what she is asking the extended trust for saltwater fishing to do is double-dip—in other words, to pay twice. We are already paying commercial fishers top dollar, world's best practice. We are paying them much more than the market will bear or than they would be paid from an ordinary sale in the market. The people about whom the Hon. Jennifer Gardiner is concerned are employees of the commercial fishers. Those co-operatives are owned by commercial fishers and it is up to them—the group that is being paid—to look after those employees. I suggest that the Taree Fishermens Co-operative to which the Hon. Jennifer Gardiner referred is only partly closed.

The Taree Fishermen's Co-operative Society Ltd is considering closing as a result of the Government's commitment to create recreational fishing havens. On 30 November this year the Government announced that it would create two recreational fishing havens close to Taree. This decision was the result of a thorough consultation process in that area. The creation of recreational fishing havens is about sharing the resource fairly between its users and ensuring that the resource continues to be managed sustainably. Four hundred and thirty-one submissions were received from the community and stakeholders, and 380 of those supported the creation of recreational fishing areas. That is 88 per cent support for the proposal.

Among those, the Manning Valley Chamber of Commerce, industry, and tourism associations have supported closing the Manning River to professional fishers and the netting of all fish stocks for several years. They have therefore fully supported the creation of recreational fishing havens in that area. By the creation of recreational fishing havens, 18 commercial fishers licences will be bought out in this area, with up to 40 commercial fishers licences in total being bought out in the whole mid North Coast area. As at 10 December this year, 89 commercial fishers from this region expressed an interest in being bought out. All the goings-on from the Opposition about how badly off commercial fishers are going to be is nonsense.

More commercial fishers want to sell than the Government can afford to buy, and that is the real issue. They are more than happy to sell. More commercial fishers are raising their hands to sell for the magnificent prices they are getting, and now more people want to see recreational fishing areas. All we ever hear from the Opposition are complaints. I complete my answer by saying that if members of the Opposition continue to adopt this attitude, all it will do is ensure that recreational fishers will not be able to fish at all. Members of the Opposition do not want to create opportunities for recreational fishers.

**The Hon. Jennifer Gardiner:** Rubbish!

**The Hon. EDDIE OBEID:** The Hon. Jennifer Gardiner has asked on numerous occasions what this Government is doing about workers in the co-operatives.

**The Hon. Jennifer Gardiner:** You are the Labor Party, aren't you?

**The Hon. EDDIE OBEID:** Of course we look after all workers. After all, in this House we have made it quite clear that it is the expenditure committee that will decide on how they are paid.

**The Hon. Duncan Gay:** You don't care, do you?

**The Hon. EDDIE OBEID:** Of course I care. The commercial fishers that are being paid out are being given top dollar. The employees of the co-operatives are employees of those commercial fishers because the co-operatives are owned by commercial fishers. I suggest that the Hon. Jennifer Gardiner vary the question because it is becoming very boring and very dull. I know that she does not care about recreational fishing and I know that she does not want to see recreational fishing improved, but when recreational fishers are catching fish in abundance she will be the first one to put up her hand and say, "We helped this process." The Hon. Jennifer Gardiner has not helped one iota. [*Time expired.*]

### PENSIONER ELECTRICITY REBATE SCHEME

**The Hon. JOHN HATZISTERGOS:** My question without notice is to the Treasurer. Will he advise the House on how the Government is helping pensioners with their power bills?

**The Hon. MICHAEL EGAN:** Honourable members will recall that in my budget speech last May I announced that the pensioner electricity rebate scheme throughout New South Wales would be standardised. From next January a single uniform rate will be introduced at a total cost of approximately \$67.5 million. The new rebate was to be set at \$107 per annum, which is the level at which we are confident that no pensioner would be worse off. More than 600,000 pensioners would be better off by between \$8 and \$31. For example, EnergyAustralia's 250,000 pensioner electricity customers would benefit by \$22, Integral Energy's 122,000 customers would benefit by \$14, and 38,000 former customers of Great Southern Energy would benefit by \$29. I am able to inform the House today that instead of the rebate being \$107 a year, it will be increased to \$112 per year.

**The Hon. Duncan Gay:** An increase of \$3?

**The Hon. MICHAEL EGAN:** No, \$5. After representations from the Minister for Energy, I have agreed that this further concession is necessary to ensure that no pensioner is worse off under the uniform energy concession rate throughout the State. In a full year the value of the concession paid to pensioners for their electricity and gas bills was a total of just over \$76 million. This decision to help pensioners make their dollars go further is the latest Government decision to assist the people of New South Wales to lead better lives. I hardly need to remind honourable members that from 1 January 2002, New South Wales will become the first State to abolish State debits tax. That will be a huge benefit to pensioners, many of whom like to use a cheque account despite the recent trend to use electronic banking. From New Year's Day next year, New South Wales will be the only State in the nation which does not charge any taxes on bank accounts. The abolition of the debits tax is a tax-cutting initiative worth approximately \$315 million a year.

The New South Wales Government has a history of slashing taxes. Already tax rates have been reduced by more than \$1 billion a year in the last four budgets. England had Edward the Confessor, the Normans had William the Conqueror, Transylvania had Vlad the Impaler, Florence had Lorenzo the Magnificent, and I am advised by my staff that historians are already crafting an appropriate appellation for me. Apparently the short list includes Michael the Munificent, Michael the Magnanimous, Michael the Modest and Michael the Mellow. But I would like them to keep it simple. The name that I would go for is Michael the Tax Cutter.

### DEATH OF DYLAN BYRNE

**The Hon. ELAINE NILE:** I direct my question without notice to the Minister for Juvenile Justice, representing the Minister for Community Services. Is it a fact that after five-year-old Dylan Byrne suffered horrific injuries from which he died on 4 July 2000, his mother and her partner watched television and smoked marijuana? Is it a fact that the Department of Community Services [DOCS] was aware 18 months before Dylan's death that he was being abused, but that nothing was done about it? Will DOCS investigate this tragic case and discover why no action was taken for 18 months after notification that he was being abused?

**The Hon. CARMEL TEBBUTT:** I do not have any information at hand that could adequately respond to the question asked by the Hon. Elaine Nile, but I will refer it to the Minister and undertake to obtain a response as soon as possible.

### POWERCOAL MINES PRIVATISATION

**The Hon. JOHN JOBLING:** My question without notice is to the Treasurer, Minister for State Development, and Vice-President of the Executive Council. Now that the "Powercoal for sale" advertisements



have appeared in the newspapers, including the *Australian Financial Review* last weekend, will he give the time frame for the sale process to conclude? How does the privatisation of Powercoal mines fit with Labor's stated policy of "keeping the State owned coalmines in public ownership, and utilising their synergies as a group to maximise their potential"?

**The Hon. MICHAEL EGAN:** In respect of the last part of the honourable member's question, I point out that I have dealt with that on a number of occasions in this House. I would simply refer the honourable member to my previous answers. I point out also, as I did when I first announced that the Government was considering the sale of the Powercoal mines, that this Government stands for jobs ahead of anything else. That means jobs ahead of ideology—particularly ahead of ideology. Jobs come first, and the Government is intent on ensuring that the employment prospects of miners who work for Powercoal are protected. In response to the first part of the honourable member's question, I do not have the exact timetable or precise dates for the sale in my mind. I will ascertain them, but I point out that the sale of the mine is only a *fait accompli* or a foregone conclusion when the Government finally decides that acceptable bids have been received. If acceptable bids are not received, the Powercoal mines will stay as they are.

### REGIONAL BUSINESS PROSPECTUS

**The Hon. HENRY TSANG:** My question without notice is to the Treasurer, and Minister for State Development, Michael the Munificent. Will the Minister update the House on the continued assistance given by the Government to New South Wales regional businesses?

**The Hon. Duncan Gay:** The question is out of order because there is no Michael the Magnificent in this place.

**The Hon. MICHAEL EGAN:** The Hon. Henry Tsang did not say "Michael the Magnificent"; he said "Michael the Munificent". Is the Deputy Leader of the Opposition paying attention?

**The Hon. Duncan Gay:** No.

**The Hon. MICHAEL EGAN:** I am very pleased to inform the House of a new regional business prospectus that highlights the advantages of doing business in the local government areas of Orange, Cabonne and Blayney.

**The Hon. Duncan Gay:** You cannot pronounce Cabonne properly.

**The Hon. MICHAEL EGAN:** I pronounce it the way I always have, and always will. The regional business prospectus, which is a collaborative project between the Orange, Cabonne and Blayney councils and the New South Wales Department of State and Regional Development, was launched in Orange last week by the mayors of the three participating councils. The prospectus, which cost \$60,000 to develop, received \$30,000 of its funding from the Department of State and Regional Development's Developing Regional Resources program. The project, which is the culmination of 12 months work and research, aims to boost economic growth and employment by attracting new businesses to locate to the region.

The prospectus is designed to assist the region in responding to industry requests for information about investment opportunities in a concise, professional and accessible format. One of the key characteristics of the prospectus is that it provides potential investors with the information that they need most in making decisions concerning business relocations. The prospectus provides detailed information to potential investors about the region's competitive advantages, niche markets and business returns. It also includes interviews from local business operators on the advantages of doing business in the region, and case studies involving companies that have chosen to relocate to the region.

The next phase of the project will involve working with local businesses to help them utilise the prospectus in growing their businesses. Complementing this project has been an increasingly co-operative working relationship between the three councils involved, particularly in terms of streamlining development approvals and working with companies to ensure that a more efficient and user-friendly approval process is implemented. It is good to see these three local councils working so closely with each other and with the department. I look forward to seeing such co-operation bear fruit for the Central West region in the near future. This morning in my mail I received a newsletter from the Bloodwood vineyard in Orange. If honourable members have not had a good Bloodwood red, I urge them to buy a bottle of it.

**The Hon. Duncan Gay:** We can't afford one.

**The Hon. MICHAEL EGAN:** Anyone can buy a 1999 cabernet sauvignon for \$22 and a 1992 cabernet sauvignon for \$50, which I am told is an absolute knockout.

**The Hon. Ian Cohen:** What is the difference between that and a Nimbin red? You are talking about high prices.

**The Hon. MICHAEL EGAN:** I think Reverend the Hon. Fred Nile should refer the Hon. Ian Cohen to the miracle at Cana.

**Reverend the Hon. Fred Nile:** It was non-alcoholic.

**The Hon. MICHAEL EGAN:** Of course it was alcoholic, that was the whole point of the story. Why keep the best wine until last? People are usually too drunk to know whether they are drinking cheap wine at the end of the night.

### HARRY POTTER MERCHANDISE

**Reverend the Hon. FRED NILE:** I ask the Minister for Juvenile Justice in her own capacity and as representing the Minister for Community Services a question without notice. Is it a fact that powerful commercial interests are exploiting the Harry Potter phenomenon during the Christmas period with a flood of Harry Potter books, film, videos, toys, et cetera, and, today, the release of a new Harry Potter children's video game? Is it a fact that millions of children around the world have become obsessed with the Harry Potter books, with their central themes of witchcraft and the occult? Will the department's child psychologists conduct an urgent investigation into the possibility of the harmful impact of the Harry Potter books and products on the mental health of the children of New South Wales?

**The Hon. CARMEL TEBBUTT:** No, the Department of Juvenile Justice will not conduct a study of the impact of Harry Potter books on children within the care of the department. If we could get those kids to read anything I would be very pleased. I do not share the honourable member's views about the Harry Potter books. I have not read them, and my child is too young to benefit from them; he is interested in other books, such as *Spot*. Nonetheless, I firmly believe that getting young children to read is very important and if they are interested in reading Harry Potter books, that is fine. Archbishop George Pell, with whom I do not always agree, said that the Harry Potter books are positive and have a good impact on young children.

**The Hon. Michael Egan:** Has he read them?

**The Hon. CARMEL TEBBUTT:** I do not know, but Archbishop George Pell wrote about the positive impact that the books are having on young people. On this occasion I agree with him. I certainly do not agree with an article in today's *Sydney Morning Herald* which indicated that the books were racist; I think that is taking political correctness too far. As a child I read the Enid Blyton books, and there was a lot of criticism of those books.

**The Hon. Michael Egan:** Did you like Enid Blyton books?

**The Hon. CARMEL TEBBUTT:** Yes, I have to say that I did. Anything that encourages young people to read—and warms their world and encourages them to access other books—can only be a good thing. The Harry Potter books are incredibly popular. Yesterday the young children who were in the public gallery responded to the Treasurer when he mentioned Harry Potter. Those books are popular and they encourage young people to read, and that is a good thing.

### POLICE NUMBERS

**The Hon. JOHN RYAN:** My question is to the Minister for Police. Does the Minister agree with the observations made by one of the new members of his advisory council, Mr Geoff Schuberg, that Premier Bob Carr's claims that there are record numbers of front-line police are "not believable"? Who is correct? Whom does the Minister trust for advice?

**The Hon. Michael Egan:** Point of order—

**The Hon. JOHN RYAN:** Does the Minister trust the Premier or Geoff Schuberg?

**The Hon. Michael Egan:** As honourable members would be well aware, the House is now lumbered with new sessional orders governing question time.

**Reverend the Hon. Fred Nile:** Who drafted them?

**The Hon. Michael Egan:** I think it was the Hon. Lee Rhiannon, because she was boasting about them at a Greens conference in Canberra. My spies came back and told me about it.

**Ms Lee Rhiannon:** Do you have a direct line to ASIO?

**The Hon. Michael Egan:** I will not tell Ms Lee Rhiannon who my spies are, just as I do not expect her to tell me who her spies are.

**The Hon. John Ryan:** To the point of order: The Treasurer interrupted my question before I had finished asking it.

**The Hon. Michael Egan:** No, you had finished. The honourable member began by asking "Do you agree". Under sessional orders he is not allowed to ask for an opinion. I know that the Minister for Police is very anxious to answer the question, but that is not the point. The honourable member's question is out of order.

**The Hon. John Ryan:** Further to the point of order: While it is true that my question included the words "Do you agree", it also asked "Whom do you trust for advice, the Premier or Geoff Schuberg" and that is an entirely different matter. Unfortunately, the Treasurer was unable to hear me asking that, because he actually stood up in the middle of my asking the question and interrupted by taking a point of order.

**The ACTING-PRESIDENT:** Order! I uphold the point of order. Paragraph 2 (a) of the new sessional order relating to rules for questions provides that questions must not ask for an expression of opinion. If the Hon. John Ryan rephrases his question, I will allow it should he wish to ask it when next he is given the call.

### DERELICT MINES REHABILITATION

**The Hon. IAN WEST:** My question is to the Minister for Mineral Resources. Will the Minister advise the House what action has been taken to rehabilitate derelict mines in the State's central west?

**The Hon. EDDIE OBEID:** I thank my colleague the Hon. Ian West for his continued interest in restoring the environment around our State's historic derelict mines. The New South Wales Government's annual \$1.6 million funding for the rehabilitation of derelict mines is benefiting the State's central west. This Government is serious about our environment. We are also serious about dealing with a legacy of abandoned mines that we have inherited. That is why we have increased funding for this program tenfold. I am pleased to advise the House that the Bathurst community is the latest to benefit from this important program.

The historic Phoenix and Mabel mines, just 25 kilometres south of Bathurst, operated from 1895 to 1918. They produced gold, copper, lead and zinc, and were once an important industry in that country area. The mines are close together; the Phoenix site is on a hill into which the main drive extends, and the Mabel mine is 200 metres further north. Over time, erosion has occurred in the area. In order to protect Wiseman's Creek and other watercourses, including Sewells Creek and Campbells River, the Government is rehabilitating the site. This has been undertaken in two stages. Last financial year almost \$20,000 of derelict mine rehabilitation funds was spent on an environmental and archaeological assessment of the site. Soil and water from the site was also tested.

The Government has now allocated a further \$88,000 for the second stage of this important project. The Department of Land and Water Conservation began rehabilitation work last month. Sediment dams and contour banks have been constructed, and reshaping has taken place to prevent gully erosion. Safety on the site will be improved, with shafts being backfilled or grates placed over them. Areas considered to be potentially hazardous will be fenced. Revegetation work has also been undertaken. I am pleased to advise the House that work is expected to be completed early in the new year. Once the current work is completed, the site will continue to be monitored to check on the progress of revegetation. This project is good news for the Bathurst community and for our environment. It is another success for the Carr Labor Government's derelict mines program.

### ANTI-LOGGING PROTESTERS BAIL CONDITIONS

**Ms LEE RHIANNON:** I direct my question to the Minister for Police. Why have Cooma police been requesting ridiculous bail conditions for anti-logging protesters arrested in the Badja State Forest? Why do those bail conditions include a prohibition on going within five kilometres of every State forest in New South Wales? Is the Minister aware that this will restrict people from travelling on all sections of most major highways and train routes, which will mean that the right of free association will be seriously curtailed?

**The Hon. MICHAEL COSTA:** I am not aware of the circumstances to which Ms Lee Rhiannon refers. If she were to give specific examples of police officers acting inappropriately, I would be happy to address those matters. However, I will not accept a generalisation about police. In my experience, all police officers act appropriately.

**The Hon. Dr Brian Pezzutti:** All of them?

**The Hon. MICHAEL COSTA:** As I have said on previous occasions, those who do not act appropriately are outside the service and they will be dealt with. Police officers are expected to act with discretion and integrity; they are trained to do that. With regard to bail, my advice from police is that there are some issues about how bail conditions and repeat offenders on bail are dealt with. I therefore do not accept the premise of the question at all, but if the honourable member wishes to give a specific example I would be happy to address it.

**Ms LEE RHIANNON:** I ask the Minister a supplementary question. Are the bail conditions intended to prevent individuals from participating in forest protests anywhere in New South Wales? If so, does the Minister agree that they are a blatant attack upon the freedom of New South Wales citizens?

**The Hon. MICHAEL COSTA:** I thought I made my position quite clear on this. Police act to protect the public interest and to enforce the laws. When they seek bail conditions, it is with those matters in mind. It has absolutely nothing to do with restricting the right of people to participate in demonstrations.

### POWERCOAL MINES PRIVATISATION

**The Hon. RICK COLLESS:** My question is to the Treasurer, and Vice-President of the Executive Council. What is the Government's response to mining union concerns that the sale of the Powercoal mines would lead to increased electricity charges for household customers because private operators would be able to dictate coal prices to the State-owned electricity generators? Will the Minister give a guarantee that the sale of the Powercoal mines will not lead to increased electricity charges for household customers beyond the end of any long-term sale contracts that are negotiated prior to the sale of the Powercoal mines to a private operator?

**The Hon. Eddie Obeid:** Duncan set you up.

**The Hon. MICHAEL EGAN:** Yes, the Deputy Leader of the Opposition has set up the Hon. Rick Colless, because the Deputy Leader of the Opposition knows—but he probably did not tell the Hon. Rick Colless—that at present the State-owned electricity generators source only 30 per cent of their coal from Powercoal mines anyway; the other 70 per cent is sourced from the open market or on contract with privately owned coalmines. As the Hon. Rick Colless pointed out, it is true that with any sale of Powercoal mines long-term contracts will be put in place between the electricity generators and Powercoal mines, and those contracts will generally extend over almost the whole of the anticipated life of the mines. Mines do run out of coal, and when that happens new mines are opened and developed. So all we can do by way of these long-term contracts is put in place a price for the coal to be sold to the generators for a period that approximates the anticipated life of the mine.

### POST-OLYMPICS COUNTRY RAIL INITIATIVE

**The Hon. HENRY TSANG:** My question without notice is to the Treasurer, and Minister for State Development. Will the Treasurer update the House on the Government's post-Olympics country rail initiative?

**The Hon. MICHAEL EGAN:** That was an excellent question from the Hon. Henry Tsang.

**The Hon. Dr Brian Pezzutti:** Did he say country rail?

**The Hon. MICHAEL EGAN:** That is right, country rail—something you have never travelled on in your life and something your Government did not give any attention to whatsoever. The former Coalition Government absolutely ignored country rail tracks throughout New South Wales. It closed down rail tracks all over the place and did not spend sufficient money on maintenance. It was not interested in country rail. As I was saying, the Hon. Henry Tsang has a great interest not only in the post-Olympic opportunities for this State but also in country rail and the great country regions of the State.

**The Hon. Dr Brian Pezzutti:** They are never on time. The trains are never on time.

**The Hon. MICHAEL EGAN:** The Hon. Dr Brian Pezzutti should not talk about being on time. Where was he this morning when the Opposition Whip had to give notice on his behalf? Why was he not on time this morning? Why did he not get out of bed in time? Country New South Wales will benefit from an extra \$80 million of unspent Olympic funds to rebuild and improve country rail infrastructure in 2002.

**The Hon. Dr Brian Pezzutti:** When?

**The Hon. MICHAEL EGAN:** In fact, I have provided \$40 million extra this financial year—

**The Hon. Dr Brian Pezzutti:** I saw it in this House six months ago.

**The Hon. MICHAEL EGAN:** No, you did not.

**The Hon. Dr Brian Pezzutti:** Yes, I did.

**The Hon. MICHAEL EGAN:** No, you did not. It was no more than three or four weeks ago that I announced to New South Wales and the world that of the \$140 million special appropriation we made to the Sydney Organising Committee for the Olympic Games in 1999-2000, we were getting \$80 million back. We decided to apply that \$80 million to the country rail network over the coming two years. That will mean \$40 million in 2001-02 and another \$40 million in 2002-03. State Government funding for track improvements to country and regional New South Wales in 2002-03 will increase from \$415 million over those two years. Obviously, that extra \$80 million will support thousands of new jobs in the coming year. The new funding will be spent on a range of projects, including resleepering the track between Junee and Albury, and Parkes and Broken Hill; bridge renewals between Parkes and Warrinya, which I think I have pronounced correctly and one of my Country Labor colleagues will correct me if I am wrong.

[*Interruption*]

It is obvious that no-one on the Opposition benches has a clue or has ever heard of the place. The projects also include installing steel sleepers and resurfacing the track between Muswellbrook and Moree, and resleepering and ballast cleaning between Kempsey and Glenreagh. In June 2000 the Government created a total contingency fund of \$140 million for SOCOG to meet any unforeseen expenses. The outstanding contractual, financial and legal matters have now almost been finally resolved, and SOCOG will return \$80 million to the New South Wales Government. That is \$50 million more than we anticipated last December. Sydneysiders benefited from a number of city upgrades. Now it is time for country and regional New South Wales to benefit. Opposition members are not interested in that, but we are. [*Time expired.*]

#### TEACHER RESIGNATIONS

**The Hon. HELEN SHAM-HO:** My question is to the Minister for Police, representing the Minister for Education and Training. Is it a fact that in 2000 the highest number of teacher resignations in New South Wales State schools were teachers aged between 25 and 29 years? If so, can the Minister advise why teachers in this age group are more likely to quit than teachers in any other age group? Given the fact that losing all these young teachers is a disturbing trend for the future of the New South Wales State education system, can the Minister further advise why the department does not undertake exit surveys to find out the reasons why teachers in this age group are leaving in such great numbers and do something to address this problem?

**The Hon. MICHAEL COSTA:** That is a good question, which I will take on notice. It also shows the bankruptcy of the Opposition. Since the Opposition lost the Hon. Helen Sham-Ho the quality of its questions has declined markedly. I have waited all month for decent questions and I have not had one. The Hon. Helen Sham-Ho has asked three decent questions this week, and I am impressed. Perhaps the honourable member might coach her former colleagues about asking sensible questions so that we can give decent answers. Clearly, she has it all over them when it comes to asking sensible questions.

### POLICE DRUG CRIME INVOLVEMENT

**The Hon. GREG PEARCE:** My question is to the Minister for Police. Is the Minister aware of concerns raised in the annual report of the New South Wales Crime Commission that the commission continues to detect evidence of police involvement in, or facilitation of, crime, particularly drug crime? Has the Minister been informed that these matters are now being investigated by the Special Crime and Internal Affairs Unit of the Police Service under the personal direction of Commissioner Ryan? Does he still stand by his statements that Commissioner Ryan has contributed to a corruption-resistant Police Service despite the New South Wales Crime Commission continuing to find evidence of police involvement in drug crime?

**The Hon. Michael Egan:** That is a really stupid question from a really silly man.

**The Hon. MICHAEL COSTA:** No. This is the question I was waiting for. It is an interesting question for the Hon. Greg Pearce to ask, particularly after his comments last night in the debate on the promotions bill when he made a number of disparaging comments about Commissioner Ryan. Today he continues his attack on Commissioner Ryan. He constantly attacks Commissioner Ryan. On two or three occasions I have said that I have confidence in Commissioner Ryan. What I find really interesting is the fact that the Hon. Greg Pearce is in conflict with his own leader. On 29 November the Hon. Kerry Chikarovski was asked, "Do you have confidence in Peter Ryan?" She answered, "I do." Kerry Chikarovski is on the record saying she has confidence in Peter Ryan. Is the honourable member in conflict with his leader? Can he clarify to the House his position on Peter Ryan? If he is in conflict with Kerry Chikarovski he should resign from the Liberal Party, sit on the crossbenches and take his place with the other nutters in this House. In reality, the Opposition is bankrupt. They are like unguided missiles.

**The Hon. Greg Pearce:** Point of order: The comment of the Minister referring to the crossbenchers as nutters is unparliamentary and should be withdrawn.

**The ACTING-PRESIDENT:** Order! No point of order is involved.

**The Hon. MICHAEL COSTA:** I can assure the House that I do not think all of the crossbenchers are nutters, but there are a couple and the Hon. Greg Pearce would fit in perfectly. He is a complete dope and he would fit in perfectly on the crossbenches. I ask the Hon. Greg Pearce whether he supports his leader or whether he is one of the 15 hopeless ones who need to be removed. I repeat that the Hon. Kerry Chikarovski, when asked whether she has confidence in Commissioner Ryan, said, "I do". However, the Hon. Greg Pearce constantly attacks the commissioner. That proves the point that the Opposition is in complete disarray. What I find amazing—[*Time expired*]

**The ACTING-PRESIDENT:** Order! It must be almost impossible for Hansard to hear either the questions or the answers. There is little point in members asking questions if they do not intend listening to the answers.

**The Hon. MICHAEL EGAN:** In view of the time, questions for 2001 are now over. At the conclusion of this, the last question time of 2001, I simply tell the House how much my colleagues and I have enjoyed question time throughout the year. It is the highlight of my day. I have withdrawal symptoms whenever the House is not sitting and I look forward to many happy and informative question times next year. However, honourable members need to keep one thing in mind: good answers require good questions.

### HOSPITAL STAFF SECURITY DUTIES

**The Hon. MICHAEL EGAN:** On 13 November Reverend the Hon. Fred Nile asked me a question relating to hospital security guards. The Minister for Health has provided the following response:

As agreed with the unions and the Task Force on Prevention and Management of Violence in the Health Workplace, NSW Health has created an employee classification of "Health and Security Assistant". This classification allows for a range of staff (including wardpersons, porters, cleaners or clerical staff) who have had training and are licensed under the Security Industry Act 1997 to apply for appointment as a Health and Security Assistant.

Staff appointed to these positions will undertake security duties as well as the duties of their initial primary role. It will mean that security staff can be provided in health care facilities where there is an insufficient workload for a full time security person.

It is the experience of NSW Health that a security officer's ability to empathise with and talk to people in crisis is paramount and that female security staff are more than equal to the task.

Area Health Services have been provided \$5 million pa in funding. They will determine the mix and number of security staff.

## NORTHERN NEW SOUTH WALES HEALTH SERVICES

**The Hon. MICHAEL EGAN:** On 13 November the Hon. Jennifer Gardiner asked me a question relating to strategic plans for health services in northern New South Wales. The Minister for Health has provided the following response:

Health Services in northern New South Wales are at varying stages in the development of strategic plans. Mid North Coast and Northern Rivers Area Health Services have completed their plans, which were developed after considerable community consultation. Both plans have been released publicly.

## OFFICE OF THE PUBLIC GUARDIAN

**The Hon. MICHAEL EGAN:** On 14 November Reverend the Hon. Fred Nile asked me a question relating to the Office of the Public Guardian. The Attorney General has provided the following response:

The Public Guardian's role is to make personal and lifestyle decisions on behalf of people with disabilities. The Public Guardian has only a limited role to play in making decisions about the management of the property of people with disabilities. His role is restricted to providing views about proposed financial decisions or making decisions about personal and lifestyle issues that may impact on the management of an estate.

The Protective Commissioner is the person who can be appointed to manage the estates of people with disabilities.

Whilst every effort is made to ensure that the location and storage of all significant client assets under the management of the Protective Commissioner are recorded, there have been examples of theft or disappearance of a person's property.

In some instances, clients have given away property to family members, friends or others. In other cases, visitors who have been invited by clients into their home have misappropriated items belonging to the client. I am advised that family members have, on occasion, also been known to misappropriate clients' funds and property. Claims of misappropriation are investigated, and if there is evidence of criminality, are referred to the police. Civil action may also be taken to recover property.

A client's real estate property may be sold if there is a demonstrated need for funds (eg. to meet the client's ongoing financial and care needs or to pay for entry into a nursing home or other aged care facility) or if the property is an unreasonable drain on the estate (eg. because of the cost of maintenance or repair). The beneficiary of each sale is the client.

## NURSES HEALTH

**The Hon. MICHAEL EGAN:** On 14 November the Hon. Elaine Nile asked me a question without notice relating to the health of nurses. The Minister for Health has provided the following response:

The number of cases dealing with impairment issues that the Nurses Registration Board referred to Impairment Panels on a year to year basis is as follows;

1997:	33
1998:	29
1999:	45
2000:	40
2001:	27 (as at 1 November 2001)

The figure of 174 cases, referred to in the honourable member's question, is a cumulative number representing all impairment cases referred to Impairment Panels for the period February 1997 to November 2001. There are 34,500 full time equivalent nurses employed by the NSW public health system.

The Board advises that the impairment program provides assistance to impaired practitioners whilst ensuring the protection of public health and patient safety.

Each Area Health Service has an Employee Assistance Program that provides assistance to nurses. If these nurses are assessed to have drug and/or alcohol addiction, they are then referred to local drug and alcohol services. Nurses have access to the full range of community health programs.

In addition, the Government has allocated \$100,000 to the NSW Nurses' Association to develop and promote a Nurses Mental Health Program which will promote stress management, early detection and intervention, management of mental health problems, follow-up, and improve information about nurses' mental health.

## ANTI-DISCRIMINATION BOARD INQUIRY LINE

**The Hon. MICHAEL EGAN:** On 15 November the Hon. Helen Sham-Ho asked me a question relating to the Anti-Discrimination Board inquiry line. The Attorney General has provided the following response:

During 2000/2001 the staff of the Anti-Discrimination Board (ADB) answered a total of 15,520 enquiries, or about 60 enquiries per day. The ADB's Sydney office has two enquiries officers rostered on at any given time. The average length of an enquiry call is 8 minutes, something which reflects the complexity of the problems faced by callers.

The number of calls that are received at any point of time will vary. Callers can often be put straight through to an enquiries officer. However calls can bank up from time to time and some delays will be experienced. When the Board is aware that an external event may lead to an increase in the number of calls that are made, such as the recent launch of the Board's *Report of the Inquiry into Hepatitis C related Discrimination*, additional staff are rostered on the general enquiries line to increase its capacity.

Following the commencement of the carers responsibilities provisions in March 2001, additional funding was provided for an extra part-time enquiry officer position for nine months, to ensure that the Anti-Discrimination Board continued to be able to deal with the vast majority of calls in a timely manner.

### GUARDIANSHIP ACT BREACHES

**The Hon. MICHAEL EGAN:** On 15 November the Hon. Elaine Nile asked me a question relating to the guardianship legislation. The Attorney General has provided the following response:

Whilst the Hon Elaine Nile's question refers to the Protective Commissioner and estate managers, the matters that she has referred to fall within the role of the Public Guardian.

On a few rare occasions, it has been necessary for the Public Guardian to authorise the removal of a person under their guardianship from circumstances where the person is being abused, neglected or exploited. Sadly, this has included situations where family members or carers were physically or emotionally abusing the person; refusing access to the person by that person's doctor or other health professional thereby placing the person's health in jeopardy; or refusing to provide the person with adequate care and protection. In such circumstances, it is usually necessary for the Public Guardian to seek the assistance of Police and Ambulance officers in moving the person to a safer environment.

The Public Guardian would only withhold the address of a person under guardianship from their family members in extreme circumstances. This would only occur where the person under guardianship was at continued risk of abuse, neglect or exploitation by the family member.

I am not aware of any breaches of the Guardianship Act by staff of the Office of the Public Guardian when undertaking their duties. I would be happy to investigate any alleged breaches of the Guardianship Act if the Honourable Member is able to provide specific information in relation to these allegations.

### BLOOMFIELD HOSPITAL PATIENT ASSAULT

**The Hon. MICHAEL EGAN:** On 11 December the Hon. Elaine Nile asked me a question about an alleged assault on a patient at Bloomfield Hospital, Orange. The Minister for Health has provided the following response:

The question refers to an alleged sexual assault incident at Bloomfield Hospital, Orange, on 22 November 2001. There was no reported incident on that date. However, there was an alleged incident of the nature referred to by the honourable member on the night of the second and third of November.

I am advised that the complainant was carefully supervised throughout her admission. The staff of Bloomfield Hospital exercise strict supervision of the Special Care Unit in which the complainant was accommodated. Patients are accommodated in separate rooms, all of which are directly observed by at least two nursing staff at all times. Nursing staff are relieved by other staff for meal breaks and other breaks and record observations every 15 minutes.

I am also advised that the light in the complainant's room was left on all night at her request and her room was continuously monitored by closed circuit television.

This particular incident is appropriately the subject of Police investigation. Hospital staff will naturally cooperate fully with the Police Service.

### NON-GOVERNMENT SCHOOLS REVIEW

**The Hon. MICHAEL EGAN:** On 13 November the Hon. Patricia Forsythe asked the Special Minister of State a question regarding non-government schools funding. The Minister for Education and Training has provided the following response:

As the honourable member would be aware, I have only recently been appointed as Minister for Education and Training. However, I am advised that all non-government schools have been informed by the General Manager of Finance, Department of Education and Training that their funding will remain the same for next year, adjusted in line with cost movements.

### WORKCOVER INDUSTRIAL CLASSIFICATION SYSTEM

**The Hon. MICHAEL EGAN:** On 15 November the Leader of the Opposition asked the Special Minister of State, and Minister for Industrial Relations a question regarding employers who had applied for redemption of their workers compensation industry premium rate following the introduction of the WorkCover industrial classification system. The Special Minister of State has provided the following answer:



Between 1 July 2001 and 19 November 2001 WorkCover received 288 Section 170 appeals regarding tariff classification. These appeals relate to both the 2000/01 and 2001/02 policy years. WorkCover's summary data on such appeals does not include the year to which the appeals apply.

Five appeals relating to reclassification under the WorkCover Industrial Classification system have now been finalised with one appeal successful, one unsuccessful and three appeals withdrawn.

### **HIGHER SCHOOL CERTIFICATE ENGLISH EXTENSION I PAPER**

**The Hon. MICHAEL EGAN:** On 15 November the Hon. Patricia Forsythe asked the Special Minister of State a question about the Higher School Certificate English Extension I paper. The Minister for Education and Training has provided the following response:

The honourable member should refer to my answer given in the Legislative Assembly on Tuesday 4 December 2001.

### **ORICA LTD POLLUTION LICENCE**

**The Hon. CARMEL TEBBUTT:** Yesterday the Hon. Ian Cohen asked me a question about the Orica Ltd Botany facility. I wish to add the following to the answer I gave yesterday. I have received advice that the Minister for Planning has recommended that a commission of inquiry be held into this matter. I am advised further that the terms of reference for the inquiry are to examine all environmental aspects of the proposal, and that the inquiry is likely to be held early next year. I am advised also that the calling of the commission of inquiry overrides the Environment Protection Authority's general terms of approval, which I am now informed have been issued. They become draft provisions that any individual or group seeking to put submissions to the commission of inquiry can comment upon. The community can be assured that the proposal will continue to be thoroughly assessed.

**Questions without notice concluded.**

*[The Acting-President left the chair at 1.12 p.m. The House resumed at 2.30 p.m.]*

### **CRIMINAL PROCEDURE AMENDMENT (JUSTICES AND LOCAL COURTS) BILL**

#### **CRIMES (LOCAL COURTS APPEAL AND REVIEW) BILL**

#### **JUSTICES LEGISLATION REPEAL AND 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: [2.30 p.m.]: I move:

That these bills be now read a second time.

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

**Leave granted.**

The procedures in the Local Court are in need of reform. Local Courts in New South Wales handle approximately 220,000 cases each year. Almost 98 per cent of all criminal prosecutions and more than 80 per cent of civil actions are dealt with in the Local Courts.

At present, the Justices Act 1902 sets out the procedures to be followed for criminal cases and statutory applications in the Local Court. The Act, almost a century old, is actually a consolidation of even older colonial legislation. It focussed on the role of Justices of the Peace sitting in police courts, a system which bears no resemblance to the present arrangement of magistrates sitting alone and sometimes assisted by registrars.

As a consequence, the Justices Act 1902 has been amended hundreds of times in an attempt to graft contemporary practices and procedures onto the original structure. The Act is complex, disjointed, procedure oriented and difficult to interpret. It contains antiquated rules and practices that are difficult to adapt to accommodate technological and social change. It has created impediments to court efficiency.

I am pleased to present a package of new legislation to replace the Justices Act 1902. The new package sets out clear streamlined procedures for commencing and hearing cases in the Local Court.

The language is simple and the requirements clear, consistent and readily understandable. Access to justice and respect for the law are partly dependent upon an understanding of it. Members of the community who are presumed to know the law are entitled to have it expressed in a form they can understand.

This new package removes the antiquated technical detail from the legislation. It provides a framework for court operations and allows for rules to be made to cover the technical detail. The rules can then be efficiently modified to accommodate changes in technology and improved work practices.

The reform process has involved extensive consultation over a number of years. A Justices Act Review Discussion Paper was circulated in 1992. A draft bill was also circulated but it was considered to be too long, too detailed and procedurally oriented. It offered no improvement on the old regime. The review project languished under the previous Coalition Government.

My predecessor, the former Attorney General, the Hon. Jeff Shaw revived the project and set about reforming the procedures of the Local Court. The most pressing problems were addressed in a number of legislative changes introduced in the late 1990's including:

Fines Act 1996

Justices Amendment (Briefs of Evidence) Act 1997

Justices Amendment (Procedure Act) 1997

Justices Legislation Amendment (Appeals) Act 1998

A further review of the remaining provisions of the Justices Act 1902 was undertaken by a Working Party comprised of senior officers of the Attorney General's Department and senior magistrates from the Court Management and Technology Committee.

The Working Party recommended the repeal of the Justices Act 1902 and circulated a draft bill to replace it. Comments and submissions were received from court administrators, judges and magistrates, the Law Society, the Bar Association, the Director of Public Prosecutions, the Legal Aid Commission, the Police Service and the Domestic Violence Advocacy Service.

Responses supported the need for reform and simplification. Parties called for an overhaul of procedures to improve access to justice and to increase understanding and respect for the system. Clients suggested that a reform package be drafted by Parliamentary Counsel for exposure and further comment. A Local Court specialist was seconded to identify the inefficiencies in the current procedures and design an effective legislative structure for the simplified processes.

The redesign project is now complete and the exposure drafts were tabled on 20 September 2001. The revised legislative structure will simplify the Local Court processes from start to finish. The confusing array of forms, terminology, actions, issuing procedures, service provisions and technical rules are to be replaced by clear, simple procedures. The reform package has two main streams: one for criminal matters and the other for non-criminal statutory applications.

The package consists of three bills comprising:

- (a) the Justices Legislation Repeal and Amendment Bill 2001;
- (b) the Criminal Procedure Amendment (Justices and Local Courts) Bill 2001; and
- (c) the Crimes (Local Courts Appeal and Review) Bill 2001.

The Justices Legislation Repeal and Amendment Bill 2001 repeals the Justices Act 1902 and sets out the new structure for Local Courts. The amendments to the Local Courts Act 1982 define the functions of magistrates, registrars and deputy registrars. This will increase court efficiency by allowing registrars to handle most of the routine administrative work that comes before the court. Magistrates will then have more time to devote to hearing cases.

The bill sets out clearly the procedure for dealing with non-criminal applications. Under the bill, proceedings are commenced by serving an Application Notice upon the other party and filing it with the court. Police and public officers will be permitted to issue and serve Application Notices. Private applicants will commence proceedings by serving an Application Notice signed by a registrar of the Local Court.

The current method is time-consuming and labour intensive. Government authorities and police are required to attend court registries to have information sworn before a justice, summonses prepared, the documents returned to them for service; to go and serve the respondent and then return to the court to swear and file an Affidavit of Service. The new bill allows police, for example, to prepare the application themselves, hand it to the respondent on the spot, complete an endorsement that the document has been served and then send the document to the court. Under the new procedures police and public officers can commence proceedings without leaving their workplace to go to the court registry.

The requirements for service of documents will be set out in the rules. It is anticipated that the rules will allow service of Application Notices by parties, licensed commercial agents and Sheriff's officers. Under the current system, police are used to serve thousands of summonses that are not related to criminal cases. Allowing parties to applications to make their own service arrangements will generally mean that service can be effected more quickly and police will have more time to perform police duties.

The Justices Legislation Repeal and Amendment Bill 2001 also clearly sets out the rights and duties of the parties in relation to representation, evidence, costs, rules, enforcement, appeals and contempt of court.

Placing these matters in the Local Court Act 1982 is a sensible and logical step. District Court procedure is set out in the District Court Act 1973 and rules. Supreme Court procedure is set out in the Supreme Court Act 1970 and rules. This bill places Local Court procedure in plain English in the Local Court Act 1982, making it easier to find and understand.

The bill amends the Local Court (Civil Claims) Act 1970 to put appeal provisions into the civil legislation. Previously civil appeals were conducted under the same provisions of the Justices Act 1902 that dealt with criminal appeals. The new civil appeal section is much shorter and clearer than the previous provisions because it is specifically designed to cover civil matters rather

than attempting to adapt criminal provisions to civil cases. The insertion of the appeal provisions into the Local Court (Civil Claims) Act 1970 means that all the Local Court civil procedures can be found in one Act.

The Criminal Procedure Amendment (Justices and Local Courts) Bill 2001 sets out the procedure for dealing with criminal matters in the Local Court. The bill amends the Criminal Procedure Act 1986. This means that all the provisions for dealing with criminal cases across New South Wales jurisdictions will be found in the one piece of legislation.

The procedure for commencing criminal prosecutions in the Local Court has been simplified in the same way as non-criminal offences. Police and public officers will be able to issue and serve court attendance notices on-the-spot without the need to attend a court registry to swear an Information and have a summons issued. Previously, it was much easier for police to charge offenders than issue a summons. The new procedures provide one simple method of commencing a criminal prosecution.

The Criminal Procedure Amendment (Justices and Local Courts) Bill 2001 includes the provisions that are currently in the Supreme Court (Summary Jurisdiction) Act 1967 to ensure that all summary offences are dealt with the same way, creating greater certainty and consistency for court users.

The third bill in the new package is the Crimes (Local Courts Appeal and Review) Bill 2001. This bill consolidates and simplifies the criminal appeal and review provisions of the Justices Act 1902. The appeal provisions were substantially amended by the Justices Legislation Amendment (Appeals) Act 1998 and were not as antiquated as other sections. The new bill consolidates the existing law. The bill has provided an opportunity to clarify some matters that have arisen since the 1998 Act and to arrange the sections in a way that makes the relevant law easier to find and understand. The bill makes it clear, for example, that the Land and Environment Court is to be the appeal court for all summary environmental offences. Under the previous provisions, it was arguable that parties lodge appeals in either the Land and Environment Court or the Supreme Court. Clearly, it is desirable to have consistency in the appeal process. That is best achieved by having the same kind of offences dealt with by the same appellate court.

This package of legislation makes substantial and long awaited changes to the operation of Local Courts of New South Wales. The Government is committed to improving the efficiency of the justice system. This package makes it simpler and quicker to start and run a case to the Local Court. It makes it simpler and quicker to find and understand the law and rules that are used in the court.

Local Courts play a vital role in the New South Wales legal system. They handle more than 98 per cent of all criminal cases. For the vast majority of people having contact with the justice system, their experience will begin and end in a Local Court. The reform package for Local Court will have an impact on many people and organisations in the community. The reforms are comprehensive, covering the whole field of the court's operations.

For this reason, the Government allowed this package of bills to sit on the table of this House in September to provide an opportunity for people to put forward their views on the bills.

Submissions were sought from a wide range of stakeholders. The Chief Magistrate has supported and assisted the review project from inception. She has expressed strong support for the new legislative package. From 12 November 2001 to 15 November 2001 the legislative package was discussed with metropolitan magistrates at a series of seminars arranged by the Judicial Commission of New South Wales.

Approximately 70 magistrates attended the workshops and provided comment and analysis of the proposed legislation. A number of drafting issues arose and some minor procedural differences between the current law and the new package were identified and subsequently resolved. The seminar series confirmed that there was, overall, enthusiastic support from the magistrates for the reform package.

Detailed submissions were received from the President of the Industrial Relations Commission, the Chief Judge of the Land and Environment Court, the Chief Judge of the Compensation Court, the President of the Administrative Decisions Tribunal, the Bar Association, the Legal Aid Commission, the New South Wales Police Service, the Director of Public Prosecutions, the Public Defender, the State Crown Solicitor, the District Court and the State Debt Recovery Office.

The legal stakeholder submissions supported the structure and contents of the new package of legislation. The Bar Association commented that "review and rationalisation of the Justices Act is long overdue". The Legal Aid Commission was "satisfied that the draft legislation generally simplifies and consolidates the legislation". The Public Defender noted that "the inclusion of the procedural provisions about summary prosecutions in the Criminal Procedure Act is a very worthwhile reform" and that it was a "worthwhile exercise to modernise and simplify the provisions regarding appeals".

Stakeholders also raised a number of drafting and interpretation issues which were thoroughly considered and discussed with Parliamentary Counsel. Minor amendments were made to ensure that the new language had not inadvertently changed the substantive law and that the meaning and application of sections was clear and unambiguous. The clear, modern language and presentation also exposed existing anomalies that had been hidden by the disjointed structure and antiquated language of the old legislation.

The amendments to the package as a result of the wide consultation and quality submissions received since exposure has further improved this body of legislation.

The Government is committed to improving the efficiency of the justice system. This legislative package delivers a complete overhaul of Local Court operations and summary procedure which simplifies the processes of the court and delivers substantial benefits. The modern, clear language and logical presentation make the law relating to summary procedure easier to find and easier to understand for the judiciary, the lawyers, the police, business people, public officers and, most importantly, for the hundreds of thousands of members of the community who use the Local Court each year.

I commend the package of bills to the House.

**The Hon. JAMES SAMIOS** [2.32 p.m.]: The Opposition does not oppose the Criminal Procedure Amendment (Justices and Local Courts) Bill, the Crimes (Local Courts Appeal and Review) Bill and the Justices Legislation Repeal and Amendment Bill. The object of the Criminal Procedure Amendment (Justices and Local Courts) Bill is to amend the Criminal Procedure Act 1986 to re-enact, with modifications, provisions formerly contained in the Justices Act 1902 relating to the jurisdiction of the Local Court and magistrates with respect to criminal proceedings and the conduct of such criminal proceedings, and to re-enact, with modifications, provisions formerly contained in the Supreme Court (Summary Jurisdiction) Act 1967 and the Land and Environment Court Act 1979 relating to the jurisdiction of the Supreme Court and the Land and Environment Court with respect to summary criminal proceedings and the conduct of such criminal proceedings.

The object of the Crimes (Local Courts Appeal and Review) Bill is to re-enact Parts 4A, 5, 5A and 5B of the Justices Act 1902. As stated in the overview of the Justices Legislation Repeal and Amendment Bill, the object of the bill is to repeal certain Acts and to consequentially amend others as a result of the enactment of the proposed Criminal Procedure Amendment (Justices and Local Courts) Act 2001 and the proposed Crimes (Local Courts Appeal and Review) Act 2001.

These three important bills reflect the concern of Parliament that justice delayed is justice denied. The Government and Parliament want to upgrade the legislation that deals with the Local Court. Honourable members may not be aware of the fact that the Local Court deals with some 750,000 criminal cases, 98 per cent of which are criminal prosecutions. These three bills will affect 220,000 of the 750,000 cases. The bills provide for a re-casting of the provisions dealing with the Local Court, matters that were previously dealt with under the Justices Act. The bills make the necessary amendments so that magistrates, registrars and deputy-registrars will have a more streamlined set of work rules to follow. There is an emphasis on the use of plain English and on streamlining services, such as the service of documents. The Government has introduced good housekeeping measures with a view to ensuring that the Local Court, which deals with both criminal matters and statutory issues, will function more efficiently. The Opposition does not oppose the legislation.

**The Hon. IAN COHEN** [2.36 p.m.]: The Criminal Procedure Amendment (Justices and Local Courts) Bill, the Crimes (Local Courts Appeal and Review) Bill and the Justices Legislation Repeal and Amendment Bill are three enormous and complex cognate bills. They are a complete re-write of the practices and procedures of the Local Court system in New South Wales. We note that there has been a long review and consultation process as a lead-up to the introduction of these bills. The Minister said that the new package sets out clear, streamlined procedures for commencing and hearing cases in the Local Court. However, the Greens are concerned about how the new system will work in practice. We do not want to have this new, untested system lead to any miscarriages of justice. It is important that Local Court practices and procedures be easily understandable, even to lay persons.

The Local Court deals with 98 per cent of all criminal matters and 80 per cent of all civil actions. There are many unrepresented parties and defendants in the Local Court. Therefore, it is essential that the governing legislation be readily accessible to all in the community. As the Local Court deals with approximately 220,000 cases per year, it is also important that the legislation be framed in such a way to ensure that the Local Court is as efficient and as streamlined as possible but does not impinge on access to justice or defendants' right to a fair trial. We ask the Government to keep a close eye on the operations of these Acts in case any negative unintended aspects of the bills arise when they are put into practice in the court system. With that reservation, the Greens support this legislation.

**Reverend the Hon. FRED NILE** [2.38 p.m.]: The Christian Democratic Party supports the Criminal Procedure Amendment (Justices and Local Courts) Bill and its cognate bills, the Crimes (Local Courts Appeal and Review) Bill and the Justices Legislation Repeal and Amendment Bill. We understand that the bills update legislation which dates back to 1902 and bring it up to date with modern language and suggested modifications or provisions. The Government has been criticised for not taking the opportunity to make radical changes in this area but such changes go beyond the purpose of these bills, which seek simply to update existing measures rather than introduce new provisions. That is the next stage. These bills are not controversial and we support them.

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [2.40 p.m.], in reply: I thank honourable members for their contributions to the debate.

**Motion agreed to.**

**Bills read a second time and passed through remaining stages.**

**ABORIGINAL LAND RIGHTS 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 [2.41 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.**

In February 1997, my colleague Dr Andrew Refshauge, Minister for Aboriginal Affairs, announced the Review of the *Aboriginal Land Rights Act 1983*.

The primary purpose of the Review was to address the recommendations of the Independent Commission Against Corruption's *Report on Investigation into Aboriginal Land Councils*.

The investigation by the ICAC was undertaken in response to frequent complaints from Aboriginal people regarding maladministration, the misuse of funds, nepotism, conflicts of interest and election irregularities in the Aboriginal Land Council system.

On 1 May 2000, my colleague released a Discussion Paper on the Review of the Act.

The document was distributed to all Aboriginal Land Councils and to other interested parties and agencies.

In June and July 2000, the Department of Aboriginal Affairs conducted several workshops with Aboriginal Land Council members across NSW to address the issues raised in the Discussion Paper.

This Bill has been drafted in accordance with the concerns raised in the workshops and following extensive consultation and negotiation with the New South Wales Aboriginal Land Council and a number of Government agencies.

As a result of this process, the Bill addresses the recommendations of the ICAC *Report on Investigation into Aboriginal Land Councils: Corruption Prevention and Research* and the submissions of the Audit Office and the NSW Ombudsman, in response to the Discussion Paper.

The New South Wales Aboriginal Land Council has also advised me that it supports the Bill.

The purpose of the Act is to provide an asset base and economic self-sufficiency for Aboriginal people in NSW, as compensation for the loss of their land and in recognition of the cultural and spiritual importance of land to Aboriginal people.

The Act establishes a vital organisational network for Aboriginal communities in NSW and sets up a three tier structure of Aboriginal Land Councils, at a local, regional and state level.

The land council system was established over a period of years, as a portion of the state land tax was allocated to the New South Wales Aboriginal Land Council.

The interest on the land tax was available for disbursement for the administration and operation of the land council system.

The New South Wales Aboriginal Land Council now has a significant capital fund, which the Bill requires it to preserve for future generations.

Under the *Aboriginal Land Rights Act 1983*, the New South Wales Aboriginal Land Council and Local Aboriginal Land Councils have the right to claim certain Crown land.

After nearly twenty years of land rights in NSW, almost all the available Crown land has been claimed.

This has resulted in an operational shift for Land Councils, away from claiming land, toward managing assets responsibly and productively for the benefit of all Aboriginal people in NSW.

The ICAC Report emphasised the lack of accountability as the primary cause of corrupt conduct in Aboriginal Land Councils.

In particular, the Report emphasised the importance of internal accountability, rather than external accountability.

Aboriginal Land Councils are representative bodies.

Internal accountability by councillors and the office-bearers to members is therefore essential if councils are to function properly.

External accountability by Aboriginal Land Councils to Government will not ensure that Land Councils adequately represent their membership.

It is only members who can ensure that the office-bearers are acting in their best interests.

A critical aspect of the Bill therefore focuses on improving internal accountability within Aboriginal Land Councils.

The Bill reinforces the fact that office-bearers and councillors represent the members; that the members are entitled to call them to account; and that there are appropriate measures in place when office-bearers and councillors exceed their authority.

The ICAC recommended the following groups of outcomes as necessary to prevent and counter corrupt conduct in Aboriginal Land Councils:

- Increased accountability through appropriate decision-making processes.
- Improved decision-making through meaningful political participation, transparent decision-making in LALCs, proper corporate governance in NSWALC and effective responses to misconduct and disputes.
- Proper management of resources through best practice management of LALCs, increased support for LALCs, and clearer accountability relationships between LALCs and the NSWALC.
- The ongoing strengthening of the Aboriginal Land Council system through training for members, office-bearers and staff in their roles, responsibilities, rights and relationships.

A further object of the Bill is to make the legislation as clear, logical and accessible as possible.

The Act has been amended repeatedly, with the result that certain provisions of the Act and Regulation are inconsistent.

Furthermore, some of the provisions of the ALRA are vague and some are confusing.

An accountable Aboriginal Land Rights system can only work if the legislation is accessible to community members.

Aboriginal people must not only be aware of their rights under the Act, but must also be able to enforce them.

Finally, the Act is not intended to provide land and assets as an end in itself.

The provisions of the Act must address Aboriginal disadvantage, as it is experienced in the community.

This Bill provides both assets and an organisational structure to empower Aboriginal people both as individuals and as community members.

**Some of the more significant proposals, which are intended to achieve the following specific objects, are as follows:**

**1. In accordance with the principle of internal accountability, the Bill contains the following provisions:**

- All membership applications are to be approved by the Local Aboriginal Land Council members.
- All members are to have access to their Local Aboriginal Land Council records.
- The New South Wales Aboriginal Land Council annual reports must disclose information relating to the remuneration of councillors (including travel expenses) and the funding provided to LALCs.
- The Local and Regional Aboriginal Land Councils are no longer required to provide the Minister with copies of their audited financial statements. Instead, the Local and Regional Aboriginal Land Councils are to report quarterly to the New South Wales Aboriginal Land Council and the New South Wales Aboriginal Land Council is to report annually to the Minister in relation to the funding of the Local and Regional Aboriginal Land Councils and their compliance with statutory financial duties.
- The Act will specify the circumstances under which councillors and office-bearers are disqualified from holding office.
- Local Aboriginal Land Councils are to disclose funding from all sources in their budgets and audited financial statements.
- A Local or Regional Aboriginal Land Councils is to make its non-confidential meeting minutes available to the New South Wales Aboriginal Land Council on request and the New South Wales Aboriginal Land Council is to make non-confidential meeting minutes available to a Regional or Local Aboriginal Land Council on request.
- In order to avoid conflicts of interest, councillors are to be prohibited from holding any other elected or appointed positions and office-bearers are to be prohibited from holding other appointed positions. In accordance with the Auditor-General's comments, the NSWALC's capital fund is to be adjusted in accordance with the Consumer Price Index to assist in maintaining the real value of the capital fund, the base date for determining the base capital amount will be 30 September, and the NSWALC has agreed to establish a reserve fund to meet any capital losses which may result from market fluctuations.
- Provision has been made for the New South Wales Aboriginal Land Council to allocate money to or lend money to a funeral benefits scheme for the benefit of Aboriginal people, subject to the approval of the Minister.
- The New South Wales Aboriginal Land Council will have the power of entering into funding agreements with Local Aboriginal Land Councils to ensure that funding is dependent on the responsible management of the Local Aboriginal Land Councils.

**2. In accordance with the proper management of resources through best practice management, the Bill contains the following:**

- There are to be detailed provisions for the disclosure of pecuniary interests and the procedure regarding complaints of non-disclosure of pecuniary interests.
- The Registrar is to have the power to issue compliance directions in response to legislative breaches of the Act and may refer non-compliance with the compliance direction to the Land and Environment Court.
- The NSWALC is to have a statutory Chief Executive Officer to manage the NSWALC staff and liaise with the Council.
- Procedures for the appointment of administrators and investigators have been clarified and simplified.

**3. In order to improve decision-making**

- Voting rights of members will be limited to one Local Aboriginal Land Council only.

**4. As part of the ongoing strengthening of Aboriginal Land Councils**

- The New South Wales Aboriginal Land Council will have a statutory function of making the appropriate training and educational facilities available to staff and members.

Amending the *Aboriginal Land Rights Act* has provided an opportunity for members of Land Councils and Aboriginal communities to ensure that the Aboriginal Land Council system is both relevant and workable.

The Government is committed to the continuation of a system that benefits both its members and the broader Aboriginal Community.

Further, the Government believes that the current amendments to the *Aboriginal Land Rights Act* will ensure that the Land Council system remains a significant piece of legislation, which works toward self-determination for Aboriginal people.

I commend the Bill to the House.

**The Hon. DON HARWIN** [2.41 p.m.]: The conduct of Aboriginal affairs policy in this State over many years has been bipartisan, and I am pleased to advise that the *Aboriginal Land Rights Amendment Bill* is no exception. It is interesting to reflect on how far we have moved as a nation in our relationship with indigenous Australians. Fifty years ago the fundamentals of government policy towards indigenous Australians were rooted in racial discrimination. Commonwealth and State legislation did not extend basic human freedoms, including fundamental political rights, to indigenous Australians. Indigenous Australians suffered discrimination in access to education and welfare and in relation to working conditions and pay.

Under the Menzies Government a long process commenced of overturning racial discrimination against indigenous Australians. Entitlement to pensions, unemployment and maternity allowances was granted and discriminatory provisions relating to the right to vote were repealed. Discriminatory restrictions on important rights such as freedom of movement and freedom to choose place of residence and employment were repealed. The Gorton Government sponsored the most significant and successful referenda in the nation's history, which gave the Commonwealth the capacity to legislate in relation to Aboriginal affairs.

**The Hon. Michael Egan:** He wasn't a bad old fellow.

**The Hon. DON HARWIN:** Indeed.

**The Hon. Michael Egan:** I think he was not well treated by his own party.

**The Hon. DON HARWIN:** Perhaps not. He certainly was a very good Prime Minister. Throughout this period the approach of governments was based on assimilationist philosophy, with the distinctive culture of indigenous Australians disappearing. However, that began to change in the 1970s under the Whitlam and Fraser governments as the policy shifted towards the preservation and development of indigenous culture, languages, tradition and arts as part of a more diverse culture for Australian society.

An integral part of that policy shift acknowledged the centrality of land to indigenous Australians. The background to that was the infamous Gove land rights case in the 1970s in which the Federal Court pronounced the doctrine of *terra nullius*. Under that doctrine it was asserted that indigenous Australians had no rights to land other than those specifically granted by legislation. In early 1972 Prime Minister McMahon foreshadowed that the Coalition parties would support legislation:

... to give continuing Aboriginal groups and communities the opportunity of obtaining an appropriate title under Australian law over lands on reserves which they are interested in to use and develop for economic and social purposes.

Considerable work was done to advance land rights legislation during the Whitlam Government's tenure in office, but legislation had not been enacted when that Government lost office. It fell to Malcolm Fraser's Government to progress the issue in 1976 when the Aboriginal Land Rights (Northern Territory) Act came into force. Under that legislation Aboriginal people living in traditional tribal areas gained inalienable freehold title to large stretches of land on reserves in the Northern Territory. The legislation was far reaching as it also enabled Aboriginal people to obtain title to traditional land outside the reserves.

The Fraser Government will continue to be remembered for its commitment to improving the rights and welfare of indigenous people and for its sympathetic and effective Aboriginal affairs Ministers, including Fred Chaney and Peter Baume. The Fraser Government had a federalist philosophy and believed it was the responsibility of State parliaments to enact complementary legislation for their States—an approach criticised by Labor in opposition. Labor promised to introduce uniform national land rights legislation based on the Northern Territory model. Of course, that promise was dishonoured by the Hawke Government.

The primary legislation that is the subject of this debate was enacted in 1983 and was the State's response to the leadership shown by the Fraser Government on land rights legislation for the Northern Territory. It was designed to provide an asset base to underwrite economic self-sufficiency for Aboriginal people in New South Wales to compensate them for the loss of their traditional lands and recognise the cultural and spiritual importance of land to indigenous Australians. Under the provisions of the 1983 legislation, an organisational network was established based upon 117 local, regional and State Aboriginal land councils. The asset base established under the legislation was based on the allocation of a fixed portion of land tax revenue over a period of years. The interest on this asset base, which has now reached almost \$500 million per year, has been available to Aboriginal land councils in the intervening period to fund the administration and operation of the land council system.

Like Commonwealth legislation covering the Northern Territory, the New South Wales Act gives land councils the right to claim certain Crown land, and in the intervening years almost all eligible and available Crown land has been claimed. Land councils now focus, of necessity, on operational matters and asset management rather than on new land claims. That shifting focus would of itself necessitate a review of the 1983 legislation. Sadly, however, the experience in some Aboriginal land councils has not been happy and has been reviewed extensively by the ICAC and the Audit Office. In late 1994 the ICAC commenced an investigation into allegations of corrupt conduct in Aboriginal land councils, including complaints of alleged misuse of land council money and assets, maladministration, lack of proper record keeping, nepotism, cronyism, other favouritism and conflicts of interest. In its June 1999 report ICAC found:

Regrettably the hopes and expectations of many Aboriginal people that had been raised by the enactment of the Aboriginal Land Rights Act 1983 were not realised. As the investigation of the ICAC revealed, some benefited, others did not; some obtained housing, others did not; some got jobs or money, others did not. Unfortunately, the benefits obtained or to be obtained from the Aboriginal Land Council system were not spread equally or equitably among Aboriginal people. Frequently, need, which should have been a criterion for the receipt of benefits, was not the basis of allocation of benefits. In many instances the power that the system conferred on some was abused. Complaints were frequent and widespread and in many instances justified.

That was a damning finding, and it is pleasing to realise that after considerable consultation the Government has brought a legislative response to Parliament. After an intensive review of a significant body of evidence, the ICAC's April 1998 "Corruption Prevention and Research Summary" set several important benchmarks against which we should judge these reforms. First, it calls for more appropriate community decision-making processes to optimise accountability.

It was the view of ICAC that most of the corrupt conduct it found could be linked to a lack of accountability. ICAC also emphasised how greater internal accountability enhances self-determination. A second key benchmark is more meaningful political participation in Aboriginal land councils. ICAC recommended changes, revised procedures for membership applications, limitations on membership by association and a standardisation of electoral rolls. After all, membership status and electoral processes are central to participation, and full participation is essential for internal accountability. Third, ICAC wanted to see more transparency in decision making in local Aboriginal land councils. ICAC had concerns about publicising records, the tenure and accountability of local Aboriginal council office bearers, and the delegations exercised by office bearers. Its report demonstrates how this impacts on accountability.

The fourth benchmark ICAC suggested was the necessity to institute proper standards of corporate governance at the New South Wales Aboriginal Land Council. ICAC wants councillors' roles clarified, a code of conduct developed, pecuniary and conflict of interest provisions reviewed, the role of the chief executive officer codified and strengthened, and councillors' expenses annualised. Fifth, ICAC called for more effective responses



to misconduct and disputes. Sixth, it wanted best practice management introduced into Aboriginal local land councils. A seventh benchmark was increased support for local Aboriginal councils, with ICAC calling for improved branch office support and assistance with strategic planning. Eighth, ICAC sought clarification of accountability relationships between the New South Wales Aboriginal Land Council and local Aboriginal land councils.

The ninth benchmark concerns council members, office bearers and staff better understanding their roles, responsibilities, rights and relationships with ICAC, emphasising training as a key priority. There are 37 important changes in this legislation which substantially meet those benchmarks. For example, the bill establishes internal accountability for land council members. It confirms that corporate governance provisions will apply. It requires staff appointment and promotion on the basis of merit. It requires best practice management of local Aboriginal councils and it establishes a pecuniary interest tribunal to hear complaints about Aboriginal land councils. I am pleased to see in the bill an emphasis on training for office bearers and staff. The legislation also recognises the changing focus of land councils away from land claims by requiring them to address Aboriginal disadvantage by effectively and efficiently managing their assets to facilitate this outcome.

New section 105 makes the relief of poverty, sickness, suffering, distress, misfortune, destitution and helplessness a specific object of the New South Wales Aboriginal Land Council. As a result of consultation with the Aboriginal community, the Coalition parties believe that local Aboriginal land councils, as local elected groups representing Aboriginal people, are ideally placed to address some of the social disadvantages that still exists amongst indigenous Australians. Opposition members support this expansion of their role beyond management of a council's funds and assets. There is still a long way to go to alleviate disadvantage in the indigenous community. Governments must address real ongoing problems, such as inappropriate school curricula, illiteracy, the causes of the massive overrepresentation of Aboriginal men, women and youth in the correctional system, high infant mortality, low life expectancy, substance abuse and some poor health indicators.

Some land councils are already moving to incorporate this wider role into their work. The honourable member for Wakehurst briefed me on the work that the local land council is undertaking in the Maitland area with indigenous youth, meeting regularly with them and teaching them about their indigenous culture, about the bush and giving them a sense of identity. That local land council is to be commended. I am sure that the Government does not pretend that this legislation will fix every problem in the land council system, but it will address many of them. Therefore, the Opposition will not oppose the passage of this bill.

**The Hon. HELEN SHAM-HO** [2.54 p.m.]: I welcome the Aboriginal Land Rights Amendment Bill which, in large part, is in response to ICAC's recommendations in its report entitled "Report on Investigations into Aboriginal Land Councils in New South Wales: Corruption, Prevention and Research". I am pleased that there was bipartisan support for this issue. This bill, which provides an overhaul of the Aboriginal land council system in New South Wales, covers local Aboriginal land councils, regional Aboriginal land councils and the umbrella body of all land councils in New South Wales—the New South Wales Aboriginal Land Council. The New South Wales Aboriginal Land Council is supportive of the bill. On Monday 10 December I received a letter from that land council confirming its support. The official position of the New South Wales Aboriginal Land Council is that it does not want any changes or amendments to the bill. I believe that the Government has held many consultations with the land council in relation to this bill.

Earlier this year the council passed an official resolution in favour of the bill. The only controversy relates to the quorum needed for meetings of the Aboriginal land council, which is referred to in schedule 1 to the bill—an issue to which I will refer later. Today I speak in debate on this bill because I have a personal interest in Aboriginal issues. Honourable members would be aware of my long-term interest in reconciliation—in particular, my 10-year commitment to the now defunct Council for Aboriginal Reconciliation. The 10-year term of that council expired on 1 January 2001. The work of that council has been taken over by Reconciliation Australia, which is co-chaired by Shelley Reys and Fred Chaney, who are doing well. Honourable members would be aware that in 1995, when the Hon. Barry O'Keefe was commissioner, ICAC began an investigation into allegations of corrupt conduct in Aboriginal land councils.

That investigation was in response to complaints that ICAC had been receiving, mainly from Aboriginal people, since the early 1990s in relation to the operation and accountability of land councils. As part of that inquiry ICAC prepared a discussion paper in December 1997 based on consultations that had been undertaken throughout New South Wales. In April 1998 ICAC published its report entitled "Report on the Investigations into Aboriginal Land Councils in New South Wales: Corruption, Prevention and Research",

which makes many recommendations about increasing the internal accountability of Aboriginal land councils. This bill is the outcome of those recommendations. Honourable members would be aware of the symbolic and practical significance of the New South Wales Aboriginal Land Rights Act, which was passed in 1983. Earlier the Hon. Don Harwin gave a detailed account of the development of land rights issues.

The New South Wales Aboriginal Land Rights 1983 came into being after a select committee of the Legislative Assembly released a report on land rights and other issues in 1980. So far as I know, that was the first piece of legislation in New South Wales that recognised that land has spiritual, social, cultural and economic importance for Aboriginal people. The Act recognised that land in New South Wales was traditionally owned and occupied by Aboriginal people. The Act set up a three-tier system of land councils—which are in existence today—comprising 118 local Aboriginal land councils, 13 regional Aboriginal land councils and the New South Wales Aboriginal Land Council as the umbrella body.

That has enabled local Aboriginal councils throughout New South Wales to claim Crown land for the benefit of Aboriginal people and it has provided a means for Aboriginal people to move towards economic independence and self-determination. It is clear, however, that the role of the New South Wales Aboriginal Land Council has changed over the last 18 years. As the Minister said in his second reading speech, when the Act was first in operation one of the main roles of the land council was to claim Crown land for Aboriginal communities. Today the main role of the Aboriginal land council is clearly one of management of its assets. I believe that Aboriginal land councils have worked hard for the benefit of Aboriginal people in many areas but, as indicated in the ICAC report, changes are required for the council to be more internally accountable and to work more effectively.

One problem in the land council relates to some councillors having a conflict of interest between their role as a councillor and their individual interests. This bill deals with that issue by requiring councillors, officers and staff of the land council to disclose conflicts of interest. Furthermore, it will prevent councillors from holding any other elected or appointed position while serving as a councillor. Training for councillors and staff is an important aspect for Aboriginal communities to be able to maintain their affairs. I am not being patronising by any means because I believe education and training is important for the Aboriginal community to achieve self-determination.

Section 134 of schedule 1 changes also the number of councillors required for a quorum for meetings of the New South Wales Aboriginal Land Council. The current quorum required for meetings is two-thirds of the number of councillors that constitute the council—that is, nine out of 13. This bill changes that requirement to a simple majority of seven out of 13 councillors. This has become a controversial and political issue among the 13 councillors. The land council has within it two political factions that are divided clearly on this issue. No doubt politics in the Aboriginal community is just as complicated, if not more complicated, as politics in the Chinese community, and probably in many other cultural communities, which I understand quite well. Very often you are placed in a double bind: damned if you do and damned if you don't. That is why I have such difficulty with this quorum provision.

Last week I was approached by Councillor Robert Lester, who is a councillor for the western metropolitan region of the land council. Councillor Lester and six other councillors from the New South Wales Aboriginal Land Council oppose this amendment to change the quorum from nine to seven. The other six councillors are Les Trindall, Dave Brown, Tom Briggs, James Morgan, Manul Ritchie and William Murray. These seven councillors apparently represent 82 of the 118 local Aboriginal Land Councils in New South Wales. So they represent a huge majority of Aboriginal communities. I am aware that Councillor Lester spoke to other crossbench members to gain support on this issue. My original response to Councillor Lester was to state my personal support for the bill as it currently stands. I believe a simple majority for a quorum is more efficient and effective than a two-thirds majority. The western culture has practised this way in most organisations in which I have been involved. However, I do not believe it is right for the Government or Parliament to impose a structure on a land council that does not have the agreement of the majority of its councillors.

I have made the difficult decision to amend the bill to change the quorum from a single majority as proposed in the bill to nine out of 13 councillors. To that end I will move an amendment in Committee to revert to the status quo—that is, two-thirds, being nine out of 13. Another reason for my amendment is Aboriginal self-determination; they have been trying to achieve that for years. In September the land council held a policy and procedures workshop. The council adopted a policy to enforce penalties and sanctions on any councillors who do not attend scheduled meetings. I was told by the chairman and secretary of the New South Wales Aboriginal Land Council that a lot of council resources have been wasted because a quorum had not been reached so the scheduled meetings could not transact business.

The council has not yet have the opportunity to utilise these new procedures and policies. Last Friday Councillor Lester explained to me and some other crossbench members that proposed section 134 is currently not sound and that decisions in Aboriginal culture are based on inclusion; they want things to be more inclusive, unlike the wider community which operates on a majority. Reducing the quorum would prevent more councillors from having to work together. The seven councillors I have mentioned believe that the change in quorum from nine to seven out of 13 will break down the voice of the local community because fewer people will be represented in the land council when decisions are made. In other words, more councillors represent more voices—very simple arithmetic.

Councillors usually seek local support before decisions are made at the New South Wales Aboriginal Land Council. If only seven members are needed for a quorum the danger is that the concerns of some Aboriginal people will not be heard. Councillors Robert Lester and Les Trindall saw the Minister last month and explained their concern with this amendment. The Minister said that he would support the two-thirds majority if there was a resolution of the land council to that end. From what I have been told, Councillor Lester made two attempts to get the quorum issue on the agenda for debate at council meetings and twice was ruled out of order—I call this the democratic process.

However, at the latest council meeting only 12 councillors were present. The chair used his casting vote to prevent a rescission motion by Councillor Lester and Councillor Trindall for the quorum issue to be listed on the agenda. This means that the council could not debate the quorum issue. I received a copy of a letter sent to the Minister for Aboriginal Affairs dated 3 December from the six councillors and also a letter from Councillor William Murray to the Minister dated 1 December. All seven councillors want a two-thirds majority and not the simple majority. The letter from the six councillors stated:

As a result of the chairman's failure to allow the issue to be openly discussed and properly debated, Cr Trindall and Lester filed a rescission to oppose the proposed amendment to be listed as an agenda item for discussion by Council at its scheduled 185<sup>th</sup> meeting over 26-30 November 2001. On Monday 26<sup>th</sup> November 2001, when discussing the proposed agenda for the 185<sup>th</sup> meeting, the Chairperson refused to allow the rescission motion to be dealt with. He ruled it out of order. Councillor Lester dissented from the Chair's ruling, a vote was taken to uphold the Chair's ruling the result was six votes for and six votes against the ruling. The Chairperson then used a casting vote to uphold his own ruling. We believe the Chairperson is not acting in an objective manner and denied the Council the opportunity to debate the matter by the use/misuse of his casting vote.

Councillor William Murray sent a separate letter to that effect. Last Friday I spoke to the shadow Minister for Aboriginal Affairs, the honourable member for Wakehurst. He told me that the Opposition, and apparently the Government, would support a two-thirds majority if Senator Aden Ridgeway gave his support for the proposal. Honourable members will be aware that Senator Ridgeway was Executive Director of the New South Wales Aboriginal Land Council between 1994 and 1998—before he became a senator—and that he commands a great deal of respect from all sides of politics, including from me. Since Friday I have been trying to phone Senator Ridgeway to confirm his view about a quorum of two-thirds. I have not been able to contact him. I understand that he has been attending to family members in hospital. I have been able to speak to his adviser, who speaks on his behalf. I was also given a copy of an internal Australian Democrats letter from Senator Ridgeway's office to the Democrats New South Wales parliamentary office dated 4 December, which stated in part:

... there is a very glaring problem with an amendment that proposes to reduce the quorum required to constitute a meeting of the Council. Due to the politics involved in the operation of the NSWALC Council, this proposed amendment should not be supported.

The letter recommended:

... an amendment be proposed to retain the current provisions about 9 Councillors being required to constitute a quorum (rather than allowing it to be reduced to 7 Councillors).

Senator Ridgeway also recommended that the bill be deferred so the land council can resolve the issues internally. I have spoken to the Minister's adviser and I was told that the Government will not defer this bill. Therefore, we are debating it now. We should defer it so that the Aboriginal communities can resolve their own conflicts. This is a maturation process. Why should we intervene? Yesterday I had a lengthy—almost an hour—conversation with Councillor Rod Towney, chairperson of the New South Wales Aboriginal Land Council, and Councillor Veronica Graf, secretary of the council. I respect and understand the land council's official position, which is to support the change from nine to seven, in line with the current bill. At the moment the council has problems getting through its business at meetings because councillors either do not turn up or they simply walk out of meetings.

I was told also that the land council voted to support this change of quorum at the New South Wales ALC extraordinary meeting on 13 November. However, yesterday I was provided with a draft minute of this

meeting. Mr Steven Wright, registrar of the Aboriginal Land Rights Act and Miss Andrea Eisenberg from the Department of Aboriginal Affairs were both present, and only nine of the 13 councillors were present, discussing the bill now before the House. The full membership was not present. I have been told by Councillor Lester that no land council legal advisers were at the meeting and that he requested that the meeting be adjourned until the council had legal representation. At that meeting Councillor Lester moved the following motion: That the status quo remain for quorum. However, the chairperson ruled it out of order. I do not want to interfere with the land council and I do not think Parliament wants to either. However, in the interests of democracy I will move my amendment in Committee. As I explained to Councillor Towney yesterday, as a member of Parliament I have to put forward the concerns of constituents, particularly the majority.

**Reverend the Hon. Fred Nile:** You still have to make a decision whether it is right or wrong.

**The Hon. HELEN SHAM-HO:** I have made a decision. It is a balancing act between the official position of a land council and the concerns of the majority of councillors. It is very complicated. After my assessment, I believe that reducing the quorum is not appropriate at least until the land council has had a chance to use its own system of penalties and sanctions on the councillors who do not attend meetings. I repeat: I have acted upon the principle of self-determination and for the sake of democracy. I commend the bill to the House.

**Reverend the Hon. FRED NILE** [3.15 p.m.]: On behalf of the Christian Democratic Party I support the Aboriginal Land Rights Amendment Bill. I have read *Hansard* of 30 March 1983, when the Aboriginal Land Rights Bill went through the House. I was interested in the background of the bill, as outlined by the Hon. Don Harwin, and how the issue developed both at the Federal and State levels. However, an important fact he left out was the strong opposition to the bill in 1983 by the Coalition—the Liberal Party and the National Party—and, honourable members may be surprised to know, by the Australian Democrats. The Australian Democrats strongly opposed the Aboriginal Land Rights Bill 1983 and voted against it. The final vote was 21 to 18.

Only two crossbench members were in the House at that time—me, then representing Call to Australia, now the Christian Democratic Party; and the Hon. Elisabeth Kirkby, representing the Australian Democrats. One of the critical issues in this Parliament was to decide the philosophy of the crossbench members. I surprised the Government when I voted for the bill and the Australian Democrats voted against it. There was no surprise when the Opposition voted against the bill, because it had already indicated its opposition to it. I made a number of comments then that I still uphold today. In my contribution to the second reading debate I said:

I support the bill. No land rights bill, framed as it must be in heated emotions and controversy, will ever be perfect, as was seen from the vocal protests of a minority of Aborigines who last night demonstrated outside the precincts of this House. The clock cannot be turned back. The original inhabitants of other nations have received land rights. I refer in particular to the inhabitants of the United States of America, Canada, New Zealand and Alaska. Australian Aborigines are well aware of that and want similar rights. The Aborigines' claim and call for justice will not go away. It is better that the Parliament face that issue and deal with it.

I was pleased on that occasion to support the bill. Of course, I received criticism from some of my supporters, particularly those in country areas, as I realised I would. I believed then that it was an important point of principle and that is how I cast my vote. There was some uncertainty and, as can be seen from the numbers, if one or two people had been away the bill could have been defeated. As I said, there was a small difference in the final vote—21 to 18.

The controversial aspect of the Aboriginal Land Rights Amendment Bill relates to the quorum figure. Basically, we have agreed to the bill, but we have been lobbied by New South Wales Aboriginal Land Council representatives on the quorum issue. Some want to retain a quorum of nine, and some want to reduce the number to seven. The Aboriginal Land Council has 13 members, and reducing the quorum from nine to seven is not too dramatic, particularly when one considers that the quorum for this House is only eight out of 42 members. I do not think it is overturning democracy to say that the quorum for the Aboriginal Land Council should be nine or even higher, but a quorum of seven is legitimate.

If members of the Aboriginal Land Council have a difference of opinion, it is important that they do not use their position to stop the council from functioning. That is a most important point. If for some reason members do not attend a meeting and there is not a quorum of nine, the Aboriginal Land Council cannot function. If the land council cannot function there is an opportunity—I am sure the Government would be reluctant to do this—to suspend its operations. If the land council cannot function, as happens with local government, that would call into question the operation of the land council; the land council would endanger its own viability. It is important for the land council to function to pass motions and to adopt policies, programs and so on in order to show that the Aboriginal leadership can manage its own affairs. This is a test case. The Aboriginal leadership must manage its own affairs and show that it can do so. If the quorum is seven, I hope that 13 members will attend every meeting and participate.

**The Hon. Helen Sham-Ho:** You must respect the cultural differences. The cultural difference is that they make decisions by inclusion.

**Reverend the Hon. FRED NILE:** I am speaking at the moment. I received a letter dated 10 December from the New South Wales Aboriginal Land Council Chairperson, Rod Towney, which raises the question of whether we take notice of elected leaders of the Aboriginal people. We must reach the point at which we respond to the Aboriginal leadership, otherwise we undermine its authority. That important point was made clear by Mr Towney, who said:

I write regarding the Aboriginal Land Rights Amendment Bill which is currently awaiting debate in the NSW Legislative Council.

The NSW Aboriginal Land Council has had significant input into the Bill's formation over a considerable period of time. Our input involved numerous meetings with officers of the Department of Aboriginal Affairs; with the Minister responsible, Deputy Premier Andrew Refshauge, and with Cabinet Secretary, Roger Wilkins.

The Amendments were also raised earlier this year and were supported by a Statewide meeting of representatives from our 118 Local Aboriginal Land Councils and 13 Regional Land Councils and also by Councillors from the peak body, the NSW Aboriginal Land Council.

Furthermore, ensuring an extraordinary meeting of the NSWALC, specifically convened for the purpose of reviewing the Amendments it was resolved that the NSWALC fully supported the Amendments being proposed.

The Amendments contain numerous changes that will not only allow the NSWALC to conduct its business in an efficient and effective manner, but will also assist in improving the accountability of Local Aboriginal Land Councils.

That is an important point. One trigger for this legislation was the Independent Commission against Corruption investigation into, and recommendations in relation to, Aboriginal land councils. That investigation identified problems in the administration of Aboriginal land councils. Often, those problems were brought to the attention of honourable members, including me. I have received complaints from individual members of local Aboriginal land councils about accountability, maladministration, misuse of funds, nepotism, conflicts of interest and election irregularities in the Aboriginal land council system. Accountability is important. We must allow the New South Wales Aboriginal Land Council and the regional and local land councils to operate and to do their job.

A few years after passage of the Aboriginal Land Rights Bill in 1983 complaints were made about the accounting procedures and handling of finances by some Aboriginal land councils, so the Labor Government introduced legislation to tighten up the financial accountability of land councils. The Opposition voted against that legislation, yet it had been calling for more accountability and so on. I will not say to whom I spoke, but I did speak to some Opposition members who voted against the 1983 bill. I told them that the bill was a response to their criticism that something should be done to tighten up administration and financial accountability. They said, "In principle, wherever we see 'land rights' in the title of a bill we vote against it." That explanation was given to me by a then senior Coalition member. It seemed to be an emotional response; it was not based on logic or fact. Mr Towney further said:

Another crucial Amendment is the reduction in the number of Councillors required to form a quorum, from nine to seven.

In the past important business has been delayed and conscientious Councillors kept waiting, sometimes for an entire day. As democratically elected representatives yourselves, you would be aware that those given the responsibility of making decisions for their people have a duty to do just that.

When they are unable, or perhaps unwilling to make every effort to attend meetings, business must still be attended to, in the interests of the Aboriginal people of this State.

Disappointingly, there have also been occasions when quorums have been broken by a minority who were not willing to support some motions of Council, thus thwarting the democratic process.

It has been brought to my attention that a number of individuals have been lobbying Members of the Upper House on this very issue.

I urge you, in the interests of the NSW Aboriginal Land Council, and indeed in the interests of Aboriginal people around this State, to respect the majority decision of the NSWALC, and to support the passage of this Bill through the Legislative Council.

I also received a message from Ozzie Cruz, an Aboriginal Christian leader whom I greatly respect. Pastor Ozzie Cruz is a former chairman of the Aboriginal Land Council. In asking me to support a quorum of seven, not nine, he said that a quorum of nine hinders important business being discussed, because it is simply too hard to get that quorum. So two senior Aboriginal people, the former chairman and the current chairman of the New South

Wales Aboriginal Land Council, have said that for the benefit of the Aboriginal Land Council and of Aboriginal people it is important that we support the bill as it stands with a quorum of seven. For that reason, I strongly support the bill, which I believe is a good update of the 1983 Act. The bill is also simpler; it can be understood.

We must have a bill that can be understood and used by the Aboriginal people. This bill will enable the peak body, the New South Wales Aboriginal Land Council, regional councillors and local councillors to work efficiently and in harmony with one another. That is the main point at this stage of the debate. Although members of the State body, the New South Wales Aboriginal Land Council, have been lobbying for a quorum of nine, I challenge them to find a spirit of co-operation and to work in harmony in the land council to make it work. I issue this challenge today: Let the Aboriginal leadership show the white community that it can manage its own affairs efficiently and with accountability.

**The Hon. IAN COHEN** [3.28 p.m.]: The Greens support this bill.

**The Hon. Helen Sham-Ho**: Be brief! We have all said enough as it is.

**The Hon. IAN COHEN**: The Greens consider this bill to be very important so if I speak at length on it, so be it. The Greens hold this issue in very high regard. We appreciate the work done in the past with the various Aboriginal land rights Acts. The original 1983 Act was landmark legislation. It contributed significantly to the self-determination and reconciliation processes in New South Wales. The Act aimed to assist Aboriginal self-determination by improving financial independence. The intent of the Act was set out in the second reading speech by the Hon. Frank Walker, the then Minister for Aboriginal Affairs, who said:

In recognising prior ownership, the Government thereby recognises Aboriginal rights to obtain land. The Government believes the essential tasks to ensure an equitable and viable amount of land is returned to Aborigines.

The Act established mechanisms to achieve this, principally by the Aboriginal land councils making claims on Crown land. The Act also established a source of compensation, recognising that Aboriginal people have a valid claim to be financially compensated for the loss of their land, and for the deprivation that loss has caused. The Act established local, regional and State Aboriginal land councils, which had a variety of functions vested in them. The New South Wales Aboriginal Land Council [NSWALC] comprises full-time Aboriginal councillors equal in number to the number on regional Aboriginal land councils—which is currently 13. The objects of the New South Wales Aboriginal Land Council are set out in proposed section 105 of the bill. They are (a) to improve, protect and foster the best interests of Aboriginal persons within New South Wales, and (b) to relieve poverty, sickness, suffering, distress, misfortune, destitution and helplessness of Aboriginal persons within New South Wales.

The functions of the council are set out in proposed section 106. Some of those functions are to acquire land; make claims to Crown land; mediate, conciliate and arbitrate disputes relating to the operation of the Act between Aboriginal land councils; make grants or lend money to, or invest money for or on behalf of Aboriginal persons; promote the protection of Aboriginal culture and the heritage of Aboriginal people in New South Wales; provide or make available appropriate training for staff, officers and members of Aboriginal land councils; and ensure that no part of the income or property of the council is transferred directly or indirectly by way of dividend or bonus or otherwise by way of profit to councillors or members of staff of the council.

Section 28 of the 1983 Act required for the payment or 7.5 per cent of land tax from 1984 to 1998 into the New South Wales Aboriginal Land Council account. Section 29A of the 1983 Act required 50 per cent of the money obtained from land tax to be invested. The interest from this money was to be invested and the balance used to meet expenditure for the operations of all the land councils. From 1999 the New South Wales Aboriginal Land Council has been financially independent. Proposed section 150 specifies that the capital value of the New South Wales Aboriginal Land Council account as at 31 December 1998 is to be maintained. The capital amount as of 31 December was \$485 million. Investment income and capital gains on money to the credit of the account may be disbursed from the account. The money is to be used to fund the operations of local and regional Aboriginal land councils and the New South Wales Aboriginal Land Council.

The councils have an ongoing stream of money through investments and capital gains on the capital amount. This will enable the councils to continue to operate in perpetuity. Financially, the Aboriginal Land Rights Act has been a success and has significantly helped the self-determination process. In 1997 the Minister announced a review of the Act following an Independent Commission Against Corruption report on its investigation into Aboriginal land councils. The ICAC made a number of recommendations following its investigation. After the ICAC report the Minister released a discussion paper on the review of the Act. The

document was distributed to all Aboriginal land councils and other interested parties and agencies. There was consultation with Aboriginal land councils regarding the proposed bill and they support the bill. The only matter that seems to be in dispute is that relating to a quorum.

The bill proposes to reduce the number of members that can constitute a quorum for meeting of the New South Wales Aboriginal Land Council from nine members to a majority, which will constitute seven members. This is causing concern among some present councillors who say they do not agree with the reduction. The problem stems from the fact that only nine councillors were in attendance at the meeting that discussed the bill. Since that merging seven councillors out of 13 have signed various letters and documents specifying that they believe the quorum should remain at nine. A letter to the Minister, dated 3 December, from councillors Trindall, Brown, Morgan, Lester, Briggs and Ritchie stated:

We believe this amendment has the potential to be abused and could cause a major division within the NSWALC's system if only seven members constitute a quorum to conduct a council meeting. The current requirement makes it essential for the members to work together.

A separate letter supporting the same position was sent to the Minister on 1 December by Councillor Murray. The Greens would certainly like to see the quorum issue resolved within the NSWALC. I have had extensive conversations with what I might term "both parties". It is of concern to me that we are having so much difficulty agreeing on this matter. I spoke by telephone, only a short while ago, to Rod Towney and Veronica Graf, respectively chairperson and secretary of the New South Wales Aboriginal Land Council, who pleaded the case of the position that has been worked out with the Government, through what Rod Towney has expressed as "extensive consultations" within NSWALC meetings. They said that there have been resolutions previously for a quorum of seven, in line with the position that is proposed at present.

Mr Towney mounted some convincing arguments about specific situations when sitting councillors were left waiting for lack of a quorum and when various councillors had not turned up at meetings. Councillors are paid, regardless of whether they attend meetings. I have no reason to doubt that the meetings are planned in advance for specific times during the year and are well advertised, but there is still a problem achieving a quorum. I also have had extensive conversations with Mr Lester, who supports the proposal for a quorum of nine. It is certainly a vexed issue. It is unfortunate that members are aware of only the veneer of the arguments and relationships of an organisation that every member would like to be self-sufficient and independent. I feel rather uncomfortable being in the position of having to make a decision in this House without having had an opportunity to sit in on some council meetings to see what the dynamics are. That would be important to enable one to understand the details of the issue.

Having said that, I am convinced about one thing: there are difficulties. There are factions and disagreements. On occasions the lack of a quorum has held back this organisation from the task it was duly elected to perform, that is, to represent people in their respective communities and to carry on the business under the auspices of the New South Wales Aboriginal Land Council. I have some difficulty with the thought, and it seems convincing, that this is not a consensus organisation—there are disagreements—and that retaining the quorum at nine out of 13 councillors will create greater difficulties. I understand that some cases in the Land and Environment Court have struck problems because of insufficient work conducted by this organisation as a result of the lack of a quorum.

As a member of the Greens I would always suggest that the majority decision is necessarily the best way to go. However, in this situation, if there is such concern about the numbers to make up a quorum, surely it is the responsibility of those who object to attending meetings. I was told by Mr Towney and Ms Graf, and I have no reason to doubt what they said, that every member is notified early in the piece about the dates and times of meetings to be held throughout the year. I have been informed further—and I have no reason to disbelieve this either—that as the time for each meeting approaches the members are contacted and reminded of it. There is, therefore, adequate notification of those meetings.

I have worked in a number of consensus organisations on which a small minority—by their walking out of a meeting or failing to attend when the quorum requirement is too high—can exert significant pressure. It is very difficult to make a decision. Not many members of this House, if any, have an adequate understanding of the internal workings of this organisation. We have had only a relatively short time to glean information. Had we known that the quorum number was such a significant issue, we may have been able to meet with all the councillors together and talk with them at length. Had there been time, I would have attempted to arrange a meeting with all the parties to glean the essence of the situation. Having said all that, I am inclined to favour the majority decision by the land council and support the passage of the bill in its current form. If the views of

council members have changed since the decision in question was taken, when the annual meeting of the council is held in a week or so the matter can be sorted out. In the circumstances, and with the limited information at hand, I am inclined to support the Government's position on this matter.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.42 p.m.]: Considerable work has been put into many aspects of the Aboriginal Land Rights Amendment Bill. I understand that there is consensus and people are happy with most of the bill. The issue that I am concerned about—

**Reverend the Hon. Fred Nile:** Are the Australian Democrats going to vote for it?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Oh, stop interrupting.

**Reverend the Hon. Fred Nile:** Are you going to vote for it this time?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Why don't you wait to find out.

**Reverend the Hon. Fred Nile:** That is what I have been waiting for. Give me your answer. Just say yes.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Just wait, you silly man. Why don't you let me finish my speech, as I let you finish yours. A great deal of time has been spent on an issue that seems reasonably simple: the quorum number. It has been difficult to achieve a quorum because members have not attended council meetings. The suggested solution is to lower the quorum number. I think that the Government is confusing two issues: the workability of a council when people do not turn up, and the lowering of the quorum number as a solution. If people do not turn up, there is power to make them turn up. It may be necessary to get consensus within the group to ensure attendance. If lack of attendance is a problem, that is what should be attacked; the quorum number should not simply be lowered.

The danger of lowering the quorum number is that a few people can gain control of the organisation and act without the consensus of the bulk of the group, enabling the body to be dominated by a small group. Achieving a quorum may be a temporary problem. With nine members present, seven members of the council voted for the entire package of amendments. Lowering the quorum was part of this overall package. The quorum number issue was not separately identified at that time. At a later meeting of the council when 13 members were present a rescission motion was put. The vote was tied at six all. The person who was not present would have supported the rescission motion, so the lowering of the quorum would not have been agreed to. The chair had a casting vote and voted for the lowering of the quorum. No legal adviser was present and legal advice was not sought.

So a clear majority of current members of the council did not support the lowering of the quorum number. That is a very important point. We have been lobbied by Robert Towney, the chairman, and Veronica Graf, the secretary, to agree to lower the quorum number. We have been lobbied by Robert Lester, who was the treasurer—there is some controversy about that but he was elected as treasurer—and I have also spoken to Aden Ridgeway, who is very well-known in this area. I think that he fulfils the role that the Hon. Ian Cohen referred to: someone who can stand back and take a long-term view of whether the system works well. I asked Aden, "Can I quote you on this? I do not want to give you any trouble." He asked, "Are you taking some heat?" I said, "It is a question rather of heat than of credibility really in the sense that we are being lobbied from both sides." He said, "I think that it is important that, however difficult it may be, people have to attend meetings and represent the people with a sufficient quorum to reach a decision that people support." While consensus is hard to achieve, it is very important that a group such as the Aboriginal Land Council is not controlled by a small clique, which is what happens if the quorum is too small.

There will be an election of the Aboriginal Land Council soon and the individuals who have had poor attendance records presumably will be dealt with by the voters. Changing the composition of the council would be the earliest and simplest way of solving the problem. That would be the most desirable solution, but we cannot guarantee that. I do not believe that because a certain number of people at a certain point of time had poor attendance records for some reason we should lower the quorum number, which effectively could allow a small body to control the group. So I support the amendment to keep the larger quorum number. I hope that other honourable members will support the amendment, which is important to maintaining the coherence of the Aboriginal people and the workability of their council so that it can work in the interests of all Aboriginal people.



**Ms LEE RHIANNON** [3.48 p.m.]: I support the comments of my colleague Mr Ian Cohen.

**The Hon. John Hatzistergos**: It is not about national parks.

**Ms LEE RHIANNON**: I acknowledge the interjection of Mr Hatzistergos.

**The Hon. John Hatzistergos**: I thought you split up the workload.

**Ms LEE RHIANNON**: Yes, and sometimes it is good to be complementary in the work that we undertake. There are many ways of working, Mr Hatzistergos, which I am sure you acknowledge. We would get home earlier—I know that is what is irritating you—if you eased up on your interjections. My colleague has canvassed many of the considerable issues we are currently grappling with in this case. The review of the Aboriginal Land Rights Act 1983, the discussion paper of the review of the Act, and a whole series of workshops constitute some of the background to the process that has led to the introduction of this legislation. The bill clearly is the result of all those reports and workshops.

This bill gives recognition to organisational networking and I wish to highlight some of the early history surrounding the bill. In many ways it stems from a select committee that was chaired by Mr Maurice Keane, who was a very hardworking member of the lower House. I knew him from his work in the peace movement. He extended his work far beyond the New South Wales Parliament and was a hard worker not only in helping his constituents but also in his commitment to Aboriginal rights and many international causes. I am very pleased to have the opportunity to speak about his work.

Committee members who worked with Maurie Keane came from a whole range of political parties. In the lower House, obviously there are not as many political parties as there are in the Legislative Council, but it is important to remember that the committee comprised representatives of more than one party. The report produced by the committee really broke with assimilation attitudes and policies that were implemented by successive governments at both the State and Federal level. It was really quite a groundbreaking report.

**The Hon. Don Harwin**: No it was not. All it did was follow what the Fraser Government had done seven years before.

**Ms LEE RHIANNON**: I actually disagree with Mr Harwin. The report was very significant for the Aboriginal people of New South Wales and it had a flow-on effect throughout the country. The report broke with the old assimilation attitudes. The committee explained that the granting of land rights was of paramount importance to Aboriginal people and to their rights in many other areas, such as education, health and employment. I place on the record my congratulations to Mr Maurice Keane on that report. I also congratulate Mr Col Markham, who is a member of the lower House who has continued much of the fine work of Maurice Keane.

Mr Markham has done extensive work for Aboriginal communities throughout the State, and recently I had the opportunity to attend a function at Wollongong in his company. The function was hosted by the South Coast Labour Council to commemorate the work of the Aboriginal Advancement League. A few of the Aboriginal members of the organisation, their white supporters, and a number of relatives of the original Aboriginal members of the organisation were also in attendance.

It was a very moving evening. Fred Moore, a stalwart from the Miners Federation who has campaigned for Aboriginal land rights for decades, gave a history of the many ways that the trade unions in Wollongong had ensured that Aboriginal people were paid decent wages and were able to go into shops and get service, and that Aboriginal children were able to get to school. They also ensured that racism did not rear its ugly head. A number of the local Kooris spoke about how, when they moved outside the Illawarra area in the 1950s and 1960s, they realised that racism was still rife.

I congratulate the secretary of the South Coast Labour Council, Arthur Morris, and other members of the council on a really wonderful evening. I was happy that I was able to attend with Col Markham, who was very warmly welcomed because of all the work he has done for people in his Wollongong electorate as well as in the wider Aboriginal community.

The Aboriginal Land Council network is a major organisation in New South Wales, and council members who have worked to expose corruption should be congratulated. It is often difficult for non-Aboriginals to come to grips with corruption, and it is quite distressing that some non-Aboriginals use

corruption in Aboriginal communities in a racist and very damning way that is not constructive. Corruption occurs in all communities, and it is up to those communities to develop processes to deal with it. When members of Parliament hear racist abuse following the discovery of corruption in Aboriginal organisations or in relation to Aboriginal issues, they need to condemn it very strongly. It is just another form of racism that must be combated at every turn.

The Independent Commission Against Corruption [ICAC] investigated some of those problems, and now this legislation has been introduced. Inevitably, difficulties will emerge in the introduction of a system of self-governance within Aboriginal communities. The Greens believe that this bill goes some way towards addressing those difficulties and developing the great potential of the land rights system.

My colleague the Hon. Ian Cohen and I have very carefully considered the quorum matter because honourable members on both sides of the Chamber are feeling quite passionate about it. The Hon. Ian Cohen outlined the Greens position in supporting the Government. If people consider the matter carefully they will realise that the purpose of the quorum is to allow the organisation to function and encourage members to attend, but not such that the bar is set so high that the organisation cannot meet and function. The Greens believe that this legislation is important. It certainly can be improved upon, but it nevertheless goes a considerable way towards enabling Aboriginal communities throughout New South Wales to improve the conditions under which they live, work and are educated.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [3.56 p.m.], in reply: This amendment bill will refine and improve Aboriginal land rights legislation by making the Act accessible to Aboriginal people in New South Wales, by increasing the accountability of Aboriginal land councils, and by improving governance procedures generally. I thank all honourable members for their contributions to the debate. Obviously a lot of the comments surround the quorum issue, and that matter will no doubt be discussed in Committee. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

#### **In Committee**

**Clauses 1 to 4 agreed to.**

#### **Schedule 1**

**The Hon. HELEN SHAM-HO** [3.58 p.m.]: I move:

Page 47, schedule 1 [17], proposed section 134, line 3. Omit "a majority". Insert instead "two-thirds".

I spoke at length on this issue in the second reading debate and there is not much more I can add. I refer people who wish to know the rationale behind my amendment to my contribution to the second reading debate. However, I would like to clarify some of the points that other honourable members made about the quorum. As the Hon. Ian Cohen said, it is really very hard for outside people such as me—non-Aboriginal people—to understand and comprehend how Aboriginal councils operate.

I have been involved with the Aboriginal community for 10 years and I understand them very well. The Government's proposal to change the quorum from nine to seven was objected to by the majority. As the Hon. Ian Cohen said, unless one is on the council, one does not know. The first Aboriginal Senator was Neville Bonner. The only Aboriginal senator presently in Parliament, Aden Ridgeway, was formerly the executive officer of the Aboriginal Land Council. He would know what is going on, he is intelligent and commands respect from a lot of people. He was the person who advised the Coalition, very strongly, and he talked to the shadow Minister. I respect his view.

In his letter lobbying the crossbench, the Hon. Dr Arthur Chesterfield-Evans was correct in saying that the quorum issue is about more than just the workability or representation of the land council. It is accepted that, by virtue of their culture, Aboriginal people make decisions by inclusion: they want to include everyone, their families and everyone.

**Reverend the Hon. Fred Nile:** But they do not turn up.

**The Hon. HELEN SHAM-HO:** No, they did not turn up. I do not want to be patronising, but I will explain what happens. When that meeting with the department decided on a change of quorum from nine to seven, they did not have a quorum, so that fewer than nine people made that decision. The quorum number was not decided on by a majority. The seven councillors decided to take action, and they represented 82 out of the 118 local Aboriginal councils. This is all about politics. As I said before, I do not want to be involved in local politics.

**Reverend the Hon. Fred Nile:** They only had to turn up and vote.

**The Hon. HELEN SHAM-HO:** As I said before, they did not turn up, and that is why they decided at the September workshop that they should have a sanction. They have a policy of penalties and sanctions for people who do not turn up, so that the council is workable. However, September was only a few months ago, and the council has not had a chance to implement its policies. We have not given them a chance to try.

I will now correct something the Hon. Malcolm Jones said by way of interjection. Because I am educated in western culture and have been involved in Parliament for a long time, I know that western democracy is a simple majority, that is, 50 per cent plus one. But I am told by Aboriginal people that they want a consensus, they want inclusion. We are trying to make them more accountable and to have more voices heard in council. However, if Parliament will not support my amendment, I am not going to kill myself.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.04 p.m.]: The Government opposes the amendment. Some of the debate on this amendment has been quite extraordinary. The recommendation to change the quorum from nine to seven came from the New South Wales Aboriginal Land Council, and the Government reflected that recommendation in the bill. The point has been made that the bill has been through an extensive consultation process over a number of years. The intent of the amendment is to allow the council to operate more efficiently, and it was agreed to on the condition that it be subject to the current provision in the Act requiring all resolutions of council to be passed by a minimum of six councillors.

That means that although the quorum will change, no decisions can be passed without the assent of the same number of councillors that is presently required. That addresses some of the issues raised by the Hon. Helen Sham-Ho. As I have said, the major and minor proposals in the bill have been the subject of extensive consultation with the New South Wales Aboriginal Land Council over the past year. That council formally agreed to the changes in the bill. Although some councils are now asking for a quorum of nine, I have been advised that no rescission motion has been put to the Aboriginal Land Council. At an extraordinary meeting of the council on 18 November, the quorum issue was discussed and the meeting decided to retain the current quorum in the bill, that is seven.

We all need to remember that the quorum is just the minimum number with which the council can meet. Quite clearly it does not preclude people from attending meetings. The final point that needs to be made is that, by seeking a quorum of nine, the proposed amendment would require more of the council than is required of this House, whose quorum is eight. Therefore, I consider the amendment to be patronising. I repeat, the Government opposes the amendment.

**The Hon. DON HARWIN** [4.05 p.m.]: As the Hon. Helen Sham-Ho adverted to, the Opposition has consulted quite widely on this matter, and it is quite fair to say that it has resulted in some controversy and a range of views. As the Hon. Helen Sham-Ho also said, the Opposition has had extensive discussions with the former Executive Director of the Aboriginal Land Council, Senator Aden Ridgeway. Our view is that there is a very strong case to leave the quorum as it is. That is the very clear preference of the majority of the Aboriginal Land Council members for that.

Frankly, the Opposition has some sympathy with the position taken by the Hon. Helen Sham-Ho, and we will not be unhappy if the amendment is accepted by the Committee. If the quorum stays as it is, it will need to be monitored. Obviously, if it is not working, the Government will need to introduce further amendments. The clear advice that we have had, after wide consultation, is that it is preferable to leave the quorum as it is.

**Reverend the Hon. FRED NILE** [4.07 p.m.]: During my contribution to the second reading debate I stated my opposition to this amendment. I reiterate that this is about the level of the quorum, not about the democratic vote that will take place. A democratic vote is achieved when all members of an organisation attend a meeting and vote. We are discussing a quorum of seven. However, I hope and pray that the 13 members of the

council will attend every meeting. All members have a calendar and they can organise their programs around attending meetings. Because members are paid even when they do not attend, I urge those members who do not wish to attend to resign so that another delegate can be appointed. That is the obvious answer.

If members have health or travel problems, or some other reason for not attending, they can be replaced by other representatives from their region. If a quorum is seven members, I hope that the other six members will attend so that they can have a democratic say and vote on the adoption of policies and make decisions on behalf of all Aboriginal people in this State. There are two separate and different issues here: a quorum and a democratic vote.

**The Hon. MALCOLM JONES** [4.09 p.m.]: I would like to take this opportunity to thank the Hon. Helen Sham-Ho for correcting my understanding, as a non-Aboriginal person, of how Aboriginal people think. I wish to explain to the House that I simply took the advice of the Chairman of the Aboriginal Land Council.

**The Hon. DAVID OLDFIELD** [4.10 p.m.]: The situation with regard to the quorum for meetings of the Aboriginal Land Council has been made quite clear by the Reverend the Hon. Fred Nile, who, I gather, is now making it clear to the Hon. Patricia Forsythe: it is not a matter of democracy with regard to the size of the quorum; it is simply a matter of whether councillors turn up for council meetings. There is the potential for members to hold meetings to ransom by not turning up and therefore preventing the meeting being held. It should not be lost on anyone that those meetings occur only every six or eight weeks, or between six and nine times a year, and that councillors are paid \$65,000 a head for supposedly doing their work. By not turning up for meetings, councillors are not doing their work. One thing that should be considered is penalising councillors financially if they do not turn up for meetings.

**The Hon. Helen Sham-Ho:** They are.

**The Hon. DAVID OLDFIELD:** Well, we should penalise them more. It is hardly onerous to turn up between six and nine times a year to meet with one's brothers and sisters and be involved in such meetings. If at present councillors are concerned about the conduct of the meetings and they are staying away as a consequence, and, as a result, are preventing the meetings from going ahead, perhaps the quorum requirement will force them to turn up. I agree with Reverend the Hon. Fred Nile that there should not be six, seven, eight or nine councillors at these meetings, but, rather, at \$65,000 a head, there should be 13 councillors—in other words, the whole complement of councillors—at every one of the six or perhaps nine meetings that are held each year.

**The Hon. IAN COHEN** [4.12 p.m.]: Whilst the Greens do not support the amendment, it is a pity that when there are so many other important aspects of the bill to be debated, so much angst and time is being spent on this issue. We are trying to resolve the issue as best we can. Whilst I might have come to the same conclusion about the quorum as the Hon. David Oldfield, I discussed the matter with Rod Towney, the Chairperson of the Aboriginal Land Council, and Veronica Graf, its secretary. They were travelling in a car around the Kempsey area, where they were attending other meetings.

The Aboriginal Land Council is a massive organisation that represents a community that is dispersed throughout New South Wales. Just as it is wrong to criticise the Parliament for sitting only 50 days in one year, it is not fair to criticise these people. The passion with which Mr Towney presented his case—detailing where he was, where he was travelling to, and the fact that he would be in Sydney very soon and could speak to me in person if necessary—indicated to me that he was doing his job pretty well. It was clear that he not only was making an effort to attend council meetings but was servicing his constituency in a fair and proper way. In a letter dated 10 December addressed to members of the Legislative Council, Mr Towney wrote:

The NSW Aboriginal Land Council has had a significant input into the Bill's formation over a considerable period of time. Our input involved numerous meetings with officers of the Department of Aboriginal Affairs; with the Minister responsible, Deputy Premier Andrew Refshauge, and with Cabinet Secretary, Roger Wilkins ...

In the past important business has been delayed and conscientious Councillors kept waiting, sometimes for an entire day. As democratically elected representatives yourselves, you would be aware that those given the responsibility of making decisions for their people have a duty to do just that.

Mr Towney mounts a convincing argument. I understand from further conversations with him that council meetings are well planned, and that councillors are given clear notice of when they will be held. According to Veronica Graf, the Secretary of the Aboriginal Land Council, councillors are notified shortly before each meeting, either personally or in writing, of the date on which it is to be held.

I am concerned that if the quorum is lowered, all councillors will be obligated—in fact, given that they are well paid, they will have a moral responsibility—to attend council meetings. It seems that perhaps the quorum should not be in issue, but given that it is, we need to consider it. If councillors are not attending sufficient meetings, we also need to consider whether this is a deliberate political act to slow down the process. Most importantly, the council must make decisions about the housing rights, health, and education of Aboriginal people throughout New South Wales. I have heard that \$100,000 has been spent on legal processes to do with quorum and attendance issues, which is of concern. It is important that the Government's proposed quorum of seven be supported and that we monitor the situation. A quorum of seven will not prevent 13 councillors from turning up at meetings and voting, after, hopefully, having reached consensus, but certainly the lower quorum might keep everyone on their toes.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [4.17 p.m.]: The arguments I wish to raise are similar to those I raised in the second reading debate, so I will be brief. In essence, the Hon. David Oldfield spoke about white fella values: "If you are not there, tough luck." People have more or less said, "If you don't turn up, you lose the vote." I think that is fair enough.

**Reverend the Hon. Fred Nile:** That's a personal view.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** The Hon. David Oldfield may not have made the statement as bluntly, but the fact is that some people say, "If you don't turn up, that's bad luck." I do not pretend to speak for the Koori people, but my understanding is that they take a lot more time to make decisions, they keep talking, and they come back again if a decision is not reached. It is perhaps a white person's construct that the times and places of meetings should be clearly defined. Obviously, where the two cultures meet, in this case in a fairly white paradigm, that may cause some difficulties.

I believe there could be a danger in a small group controlling the council if the quorum is small. The Minister put the argument that this House has a quorum of only eight of a total of 42 members, but although there may be only eight members in the Chamber, the other members are in their offices watching or listening to the excitement on television, and they come into the Chamber when the bells ring. So, we are within a white paradigm in which a very high percentage of members turn up a large percentage of the time.

It has been argued that the land council is in favour of the bill. In fact, the initial vote was seven to nine in favour of the entire legislative package. But the quorum was not discussed. When the rescission motion was later put to the quorum, the vote was six-all. The one person who did not attend the meeting was not in favour of the quorum being lowered to seven.

In the absence of that person the vote was tied at six all and the chairman had the casting vote. Arguably, the vote went the wrong way, but if there had been a proxy vote the result may well have gone the other way. Should we allow a small group to have potential control or should we return to the simplistic position that I referred to earlier. The upcoming elections may change that situation. The problem remains that many people do not turn up to vote. Meetings that involve geographical difficulty or financial penalty could be conducted by phone hook-up. Encouragement of participation is a separate issue to members not having to participate while a quorum conducts business.

Aden Ridgeway has asked that the big picture be taken into account. There should be a consensus within the Aboriginal community that all participate in decisions made in their own interests. He suggests that the higher quorum should remain and that the problem regarding attendance of members be addressed separately. I ask honourable members to support the views presented by Aden Ridgeway, even though I did not particularly wish to do him in. We should consider the credibility and breadth of vision of the groups to whom we have spoken and not consider the issue merely in the short term. The concept of a small group having control could work but whether it would work in the long term is another question. I ask honourable members to support the amendment.

**The Hon. RICHARD JONES** [4.21 p.m.]: We are caught between two powerful lobbyists. I talked to Robert Lester, who is in my office, and he presented a convincing argument. Like the Hon. Ian Cohen, I too spoke to Rob Towney today at some length. He was at Coffs Harbour on the speakerphone and he presented a convincing argument. We are damned whichever way we decide because we will upset half of the council members. However, it would appear that more than half the members of the council want a quorum of nine. We do not have proof of that, but my information is that the majority of the Aboriginal land council, 82 out of 118, support that view. Although I understand the arguments of Rob Towney and others, I think I will have to vote to

retain the status quo of nine, which means we cannot go wrong, even though opinion is divided down the middle. I ask that the Government monitor the situation over the next year to see how it works. As Reverend the Hon. Fred Nile stated, members should turn up regardless of the decision and be involved in the affairs of the land council.

**The Hon. HELEN SHAM-HO** [4.23 p.m.]: It is only fair that I respond to some of the questions that have been raised. First, I respond to the Hon. Richard Jones about proof in relation to a quorum. I have received letters from seven of the 13 councillors. They agree that the status quo should remain, that is, nine out of 13. I am glad that the Hon. Richard Jones will vote for the status quo to remain, so that is not an issue. With respect to the rescission motion referred to by the Minister, only 12 members were present, so the chairperson had the casting vote that there be no rescission motion. I take this opportunity to commend Mr Towney for doing a great job. Contrary to his advice, when I moved the amendment I was not suggesting at any stage that he was a bad chairman. He is a terrific chairman and has done a good job. I have every confidence in him. However, just because a person is the leader does not mean that he or she reflects the majority view. We also have that difficulty in this Chamber.

This Committee is caught up in the politics of the Aboriginal community, politics that we cannot understand. Resignation is not appropriate in this case because an election will soon be held to appoint a new council and, hopefully, the membership will change. There will be new blood and new members who will be more involved in the council. That is important. I agree with the Hon. David Oldfield that members should be penalised if they do not turn up at meetings, even if a smaller quorum is sanctioned. The status quo should remain. It is important that community see whether it will work rather than having Big Brother say, "Try with seven members because it will be more workable and easier to run." That is wrong. We are talking about self-determination.

The Hon. Ian Cohen said it is easier to do that and that the chairman is right—I am not saying the chairman is wrong—but the proper running of the council in dealing with its program depends on the involvement of councillors. One cannot impose a minority decision on a majority, even with the assistance of a fantastic education program. The quorum is so low that a decision could be made by a small number of councillors. I will say nothing more than that. I merely wanted to clarify the points made by honourable members. We are caught between two powerful lobby groups. I will call for a division to let the Committee decide.

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

**The Committee divided.**

**Ayes, 14**

Dr Chesterfield-Evans	Miss Gardiner	Mrs Sham-Ho
Mr Colless	Mr Gay	Dr Wong
Mr Corbett	Mr Harwin	<i>Tellers,</i>
Mrs Forsythe	Mr R. S. L. Jones	Mr Jobling
Mr Gallacher	Dr Pezzutti	Mr Moppett

**Noes, 19**

Mr Breen	Mr Kelly	Mr Tingle
Ms Burnswoods	Mrs Nile	Mr Tsang
Mr Cohen	Reverend Nile	Mr West
Mr Costa	Mr Obeid	<i>Tellers,</i>
Mr Dyer	Mr Oldfield	Ms Fazio
Mr Egan	Ms Rhiannon	Mr Primrose
Mr M. I. Jones	Ms Tebbutt	

**Pairs**

Mr Lynn	Dr Burgmann
Mr Pearce	Mr Della Bosca
Mr Ryan	Mr Macdonald
Mr Samios	Ms Saffin

**Question resolved in the negative.**

**Amendment negatived.**

**Schedule 1 agreed to.**

**Schedule 2 agreed to.**

**Title agreed to.**

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

## **CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT (ADULT DETAINEES) BILL**

### **Second Reading**

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [4.36 p.m.]: I move:

That this bill be now read a second time.

As my second reading speech is essentially the same as that delivered by the Minister in the other place, but with an added reference to an amendment that will be moved in Committee, I seek leave to have my speech incorporated in *Hansard*.

### **Leave granted.**

This bill seeks to amend the Children (Criminal Proceedings) Act 1987 to provide for the automatic transfer to prison of persons convicted of a serious children's indictable offence when they turn 18 years of age. These offences include homicide, aggravated sexual assault, violent robbery and serious drug offences.

The Government believes it inappropriate to hold this category of offenders in juvenile detention beyond the age of 18. To continue to do so may jeopardise the chances of rehabilitating younger, less serious offenders.

The Government has sought to provide alternatives to custody for dealing with less serious juvenile offenders. Schemes such as warnings, cautions and conferences provided for under the Young Offenders Act, are diverting less serious offenders.

Increased funding has been provided for additional programs and treatment places to deal with the drug abuse we know can frequently lead young people into a pattern of offending behaviour. As a result of this approach we have seen a decline in the numbers of young people held in detention since 1995. But as the numbers of less serious offenders in detention have declined, the number of serious offenders has remained stable.

A recent survey by the Department of Juvenile Justice showed that between 1999 and this year the number of detainees sentenced under section 19 of the Children (Criminal Proceedings) Act 1987 had risen from 6.9% of the total detainee population to 9.2%.

Under section 19 a judge can sentence a serious offender to a term of imprisonment to be served wholly or partially in a juvenile detention centre. It is this section which the bill seeks to amend.

The bill provides that a person convicted of a serious children's indictable offence is not eligible to serve a term of imprisonment in a detention centre beyond the age of 18 unless the court determines there are special circumstances to justify it, or if the release date falls within six months of the person's eighteenth birthday.

I would like to clarify at this point that the bill, which has come from the lower House, refers to the term of imprisonment ending within six months of a person's eighteenth birthday. After further consultation and advice from Parliamentary Counsel the bill will be amended in Committee to ensure the relevant date in deciding whether a person qualifies to remain in detention beyond their eighteenth or twenty-first birthday is their date of release. I will have more to say on that in Committee.

In making a determination about special circumstances the court will have regard to the vulnerability of the person, the availability of appropriate services or programs, and any other matter the court considers relevant.

A person who is due to be transferred to prison on attaining the age of 18 years because there were no special circumstances at the time of sentencing may later seek leave to apply to the sentencing court for an order preventing transfer to a prison on the grounds that there are special circumstances justifying the detention of the person in a detention centre.

Where a person's non-parole period is scheduled to finish within six months of their eighteenth birthday it would be impractical to transfer them. To do so may also work against the chances of successful reintegration into the community.

The bill also provides that any person sentenced under section 19 is not eligible to serve a term of imprisonment in a detention centre beyond their twenty-first birthday, unless their date of release is within six months of them attaining that age.

This will apply to less serious offenders and to any person convicted of a serious children's indictable offence where the court has determined special circumstances allowing them to remain in detention beyond their eighteenth birthday.

The bill is not retrospective. It will apply to all persons sentenced after its commencement.

The Government has requested the Ombudsman to conduct a review of the first three years of the operation of the amendment.

The bill will protect the integrity of our system of juvenile detention centres. This is a system focused on dealing with younger offenders.

The presence of a significant proportion of older, more serious offenders serving long sentences can compromise the good order and rehabilitation focus of detention centres. The intent of this bill is to see those offenders placed within the appropriate programs in Corrective Services.

Juvenile Justice and Corrective Services staff will convene a case conference prior to the transfer of any person to ensure appropriate placement and programming for their rehabilitation.

This is a sensible amendment that seeks to achieve a greater separation between offenders under 18 and those over 18. It will see serious convicted offenders transferred to the adult system at age 18, while providing the ability for a judge to determine in special circumstances that they may remain in a juvenile justice facility until age 21.

I commend the bill to the House.

**The Hon. JOHN JOBLING** [4.36 p.m.]: The Opposition does not oppose the Children (Criminal Proceedings) Amendment (Adult Detainees) Bill. Honourable members will recall that before the bill was introduced last year the Opposition revealed, and made very clear by questions asked in both Houses, that persons as old as 25 years of age were serving their sentences in the Kariang Juvenile Detention Centre. This was a matter of great concern to the Opposition. Some of those adults who are serving their sentences in a juvenile detention centre had committed what could only be described as the most serious types of crime, namely, murder and rape. The bill before the House today, without doubt, results from the revelations of the Coalition to this Parliament and the consequent outrage in the community.

The purpose of the bill is to ensure that a juvenile offender who is sentenced for an indictable offence by an adult court is sent to an adult gaol upon attaining 21 years of age. The bill will ensure that persons convicted of serious children's indictable offences—in other words, offences that carry maximum sentences of 25 years or more—are sent to an adult gaol upon attaining the age of 18 years. The bill, as I have said, is clearly in response to community outrage at the matters that the Coalition brought forward. It should be noted, however, that under this legislation the courts will maintain their discretion to order that a person who is under 21 years of age at the time of sentence may serve the sentence in a detention centre rather than in a prison. There is no requirement that persons who have six months or less of their time to serve after turning 21 years of age be transferred to an adult prison.

If one were to look for arguments in support of the bill, one might well come forward with some three or four major points for consideration. The first is that the bill maintains the court's discretion, when sentencing an offender, to have regard to special circumstances. Second, the bill ensures that many juvenile offenders who have committed serious crimes of violence will serve their sentences in an adult prison once they become adults. The third point—the one that the Coalition raised—is the need for consideration of such legislation. This was a matter that the Coalition raised in September this year—two months before the Government announced its intention regarding this amending bill.

The bill does not go far enough as it allows a number of juvenile offenders who are over the age of 18 to remain in a juvenile detention centre. The Opposition has consulted widely in relation to this bill. The legislation is a step forward to correct past deficiencies in our juvenile justice system in New South Wales, particularly the law that allowed serious offenders to serve their full term of imprisonment in a juvenile detention centre after turning 18 or 21 years of age. In our research, my colleagues found a deficiency in the management of the juvenile justice system. We do not know why the annual report of the Department of Juvenile Justice does not contain any information on the number of juvenile offenders who are older than 18 or 21 years. We note that statistics are published only for those people aged between 10 and 17 years. Minister, why is that so? What is proposed to correct the deficiency so that the public will have ready access to all these statistics? That should not be a detailed and difficult proposition.

I draw to the attention of the House that the Department of Juvenile Justice provides detailed statistical information to the Australian Institute of Criminology on persons in juvenile corrective institutions. The Coalition believes that it would be easy to include the figures in the department's annual report. According to the Australian Institute of Criminology statistics for December 2000 there were 66 persons aged 18 years and over



in juvenile corrective institutions in New South Wales. That represents 35 per cent of the national total of 231. I note that in the Legislative Assembly the honourable member for Bankstown, leading for the Government, revealed that a significant proportion of those serving long sentences in the juvenile justice system were older, more serious offenders. In fact, I recall that he acknowledged that this could compromise the good order and rehabilitation focus of detention centres. Basically, that is why the Opposition is concerned about the current system and why it has continually asked for it be changed to reflect those concerns.

The Opposition believes that this bill will assist in restoring the integrity of the juvenile system. We believe that it will ensure that juvenile detention centres are what they were originally intended to be, that is, juvenile detention centres that provide the best chance for juvenile offenders to recognise the error of their ways and receive rehabilitation support. The Opposition was concerned and disappointed that the Government did not appear to address that issue in the bill in its current form as it still allows for a number of juvenile offenders over the age of 18 years to remain in a juvenile detention centre. In that regard, I note that amendments are proposed by members of the Greens and the Government to deal with some of those matters. At this early stage I indicate that the Opposition will support the proposed amendments of the Government.

I note that further amendments are proposed by the Hon. Richard Jones, who has commented in his briefing note that there were no statutory provisions included in the bill to ensure that the Ombudsman would conduct a review of the first three years of operation of the amendments to this bill. In that regard I believe that the Hon. Richard Jones will move an amendment in the Committee stage to attempt to ensure the implementation of these amendments. The Opposition—and I hope the Government also—sees merit in the foreshadowed amendments of the Hon. Richard Jones. With those brief comments, and the view expressed in relation to the further amendments to be moved by the Government, I indicate that the Opposition will not oppose the bill.

**The Hon. PATRICIA FORSYTHE** [4.45 p.m.]: As my colleague has just stated, the Opposition does not oppose this legislation. Indeed, we are very conscious that the bill has widespread support within the community and accords with current community standards. Certainly I do not want anything I am about to say to be construed as anything but support for the legislation. However, I believe it is appropriate for balance that I put on the record some comments that should be borne in mind during the three years of review because these matters were not put on the record in the Legislative Assembly. As my colleague has said, there are five key elements to the legislation. First, an offender who has been convicted of a serious children's indictable offence on turning 18 years of age will automatically be transferred to a prison, as opposed to a detention centre. The Minister set out in her second reading speech the very serious children's indictable offences—homicide, aggravated sexual assault, violent robbery and serious drug offences. The community sees those sorts of offences as adult offences for which young people need to be dealt with as adults, which is the theme of the legislation.

The qualifying note is that on application a court may determine that special circumstances justify that young persons may be retained in the juvenile detention centre. However, those special circumstances only apply up until the young persons turn 18 or 21 years respectively, but allowing for six months in both cases if they are to be released, otherwise they are to be transferred to an adult prison. Those are the essential elements of the debate. In other words, no person beyond the age of 18½ years should be in a juvenile detention centre if he or she has been found guilty of a very serious indictable offence, or over the age of 21½ years for any offence. The next key element relates to a review at the end of the operation. My colleague said—and no doubt the Hon. Richard Jones will also say—that that has not been spelt out clearly in the legislation and amendment is appropriate. I clearly understand that the community has strong views about these issues and would be in support of the direction taken by the Government, but it is appropriate to note some other issues. Only in July an issues paper was released by the New South Wales Law Reform Commission for discussion, and the closing date for submissions to the commission was to be 30 September.

**The Hon. Carmel Tebbutt:** They have extended it.

**The Hon. PATRICIA FORSYTHE:** It has been extended. In many ways the direction of this legislation cuts across some of the issues raised in the paper. I do not deny the right of the Government to show leadership in respect to this matter, notwithstanding that the Law Reform Commission may be interested in the matter. With this legislation we are moving on from some of the principles that have underpinned juvenile justice for a long time. We are questioning a key juvenile justice principle. The Law Reform Commission refers on page 49 of its issues paper to common law sentencing objectives and notes:

While the objectives of sentencing are traditionally stated as retribution, deterrence, rehabilitation and incapacitation, the New South Wales Court of Criminal Appeal has emphasised on a number of occasions that distinct principles apply in the sentencing of young offenders, where the focus is on promoting rehabilitation. However, tension between these objectives does arise. The High Court has observed that the objectives of sentencing are "guideposts to the appropriate sentence but sometimes they point in different directions".

On page 50 the commission states:

When a young offender conducts themselves like an adult—

which is the point we are considering today—

and commits a crime involving violence or of considerable gravity, sentencing focuses on protecting the community by giving effect to the retributive and deterrent elements of sentencing, rather than rehabilitation.

It goes on to say:

Preliminary submissions by both the Director of Public Prosecutions, Mr Nicholas Cowdery QC, and the Senior Public Defender, Mr John Nicholson QC, commented on the difficulty resolving conflict between the sentencing principles of rehabilitation, retribution and deterrence in these cases.

I believe this legislation will resolve some of those conflicts by giving some direction regarding the automatic transfer to adult prisons of young people convicted of a serious indictable offence. That direction has as its clear first principle retribution and deterrence rather than necessarily rehabilitation. I do not want anyone to infer for one moment that there is no rehabilitation within our prison system. Rehabilitation is an important principle of our criminal justice system. However, the rehabilitation objective has never been stressed in our adult prisons in quite the same way as it has in the juvenile justice system, where it is a key feature.

I am proud of juvenile justice in this State in so far as it promotes rehabilitation. The juvenile justice system has always afforded an opportunity to work through young people's offending behaviour and restore them to their proper places in the community. Some offences are extremely serious and involve violence, such as aggravated sexual assault and recent cases of gang-rape. No-one can view such behaviour in anything but the gravest terms. However, at the end of the day we must hope that we can achieve the rehabilitation objective even if young people are transferred to adult gaols. I hope that the review process will consider the outcomes for those young people who have been transferred to adult prisons as a consequence of this legislation.

The bill refers to special circumstances, and there is some question as to whether those circumstances will be clarified. They can certainly be considered by the courts. I am conscious of the fact that juvenile centre populations do not reflect the demographic patterns of society: there is an overrepresentation of various groups. We must be able to identify young people with special needs so that some special circumstances may apply. For example, the Law Reform Commission refers on page 91 of its issues paper to the overrepresentation in juvenile centres of young people with intellectual disabilities.

It points out that adults with an intellectual disability constitute 2 per cent to 3 per cent of the New South Wales population yet they constitute 12 per cent to 13 per cent of the prison population. On page 92 the commission explores the definition that should apply in order to identify clearly people with an intellectual disability. When considering special circumstances it is important to note the overrepresentation of people with an intellectual disability in our juvenile justice and prison systems. On page 93 of the issues paper the commission states:

A significant issue in the participation of young people with an intellectual disability in the juvenile justice system is the ability of police and courts to identify intellectual disability.

That is an important issue, which I place on the record. In any review we must be mindful that some young people who commit horrible crimes have particular needs and that transfer to an adult prison will present special problems for them. We must identify those young people.

New section 19 refers to the blanket transfer to adult facilities of young people who turn 21 unless their term ends within six months of their attainment of that age. Together with many others, I appealed to the Minister about a young person in the juvenile justice system who was over the age of 21 and who had been found guilty of the serious offence of murder but who all the evidence suggested had made enormous gains within that system in terms of rehabilitation outcomes. He had received training and acquired a skill and been involved in numerous community activities. All the evidence pointed to the fact that this person would make an excellent citizen upon his release. However, that person's age would have required his transfer to an adult prison.

I do not resile from the fact that I was one of many who appealed to the Minister to have regard to special circumstances that would allow that person to complete his sentence within a juvenile justice facility. Therefore, it would be hypocritical of me to say other than that in some cases we must look beyond the letter of the law and consider the circumstances. It is appropriate to put that point on the record. I have talked about this issue with my Coalition colleagues and expressed a concern that has been echoed in correspondence from the Law Society. In transferring juveniles to the adult prison system we cannot ignore the issue of assaults on young people within that system. The Law Society drew my attention to a study undertaken by Magistrate David Heilpern, the results of which are published in a book entitled "Fear or Favour: sexual assault of young prisoners".

I have never visited an adult prison—although I have been to many juvenile detention centres—so I was reading about circumstances of which I have very limited knowledge. However, I found the study compelling and believe it is important to put its results on the record. These issues must be kept in mind when the legislation is reviewed. In the introduction to his book the magistrate outlines the reason for conducting the study. He writes:

In late 1992 I was representing a young man aged 18 years, charged with an armed robbery offence. He was blonde, slight and, in the words of my paralegal, "cute". Although he had been on bail pending the trial, he was now pleading guilty and it was clear that he would be sentenced to a period of custody in an adult prison.

That would happen because he committed the offence as an 18 year old. The magistrate continues:

In the course of my plea for leniency, I referred to his age, his build and his looks, and expressed the view that he would be at substantial risk of sexual assault if incarcerated, and might not be safe even in protective custody.

The judge stopped me.

"I have yet to see any evidence of sexual assault within our prisons. Where is the proof?"

I asked the judge to take into account comments from the ex-Minister for Corrective Services, Michael Yabsley, that "rape is inevitable in prison", and to consider, by way of judicial notice, the vulnerability of this particular young man.

The magistrate then refers to how he set about the task of gaining the evidence and he states:

The young man I represented was sentenced to three years, and after serving eight months, he wrote to me and described his life as the "friend" of a heavy in the system. He claimed to have been raped on "countless" occasions, until he met someone who looked after him in return for "favours".

He killed himself shortly after his release.

The magistrate then goes on to describe the study. On page 7 of the study he states:

The study was based around a questionnaire that was administered to 300 prisoners aged 18 to 25 in New South Wales prisons in 1994 and 1995; 111 surveys were self-administered by prisoners, and the balance were administered by way of interview with additional questions...

The results from the questionnaire show that one in four prisoners aged 18 to 25 claimed to have been sexually assaulted. Younger, smaller and gay prisoners within the range are at greater risk, and the perpetrators of these assaults are almost always other male prisoners. There is no evidence that segregation of younger prisoners lessens the phenomenon or that there is a racial basis for the assaults in New South Wales.

I draw attention to the fact that the magistrate referred to the "segregation of younger prisoners". It seems to me that, as we take this step, the Government has not given any indication of the destiny of young offenders when they are transferred from juvenile detention facilities. I hope that, at the very least, we are given a firm commitment that these young offenders—guilty as they will be in some cases of horrific crimes—are held within the prison system with people who are at least under 25 years of age. I note the magistrate's finding:

There is no evidence that segregation of younger prisoners lessens the phenomenon ...

Given the evidence, the Government should house these young people in separate prisons. As I recall, Parklea was built for that purpose. If these young prisoners are housed only with young prisoners, it would at the very least overcome some of the concerns that I am raising. The study to which I am referring relates not only to sexual assault. It also states:

One half of those aged 18 to 25 incarcerated in New South Wales prisons report they had been assaulted other than sexually while in custody.

The magistrate states on page 69 of the study:

Sexual assault is not random and certain characteristics are demonstrably singled out for attention by prisoner rapists. Davis—  
and here he is referring to another study—

reported that the average age of prison rape victims was 21, contrasting with an average prisoner age of 28...

I placed these facts on the record because I believe we have an obligation to ensure that whatever we do in the areas of crime and safety is fair and firm and provides the community with a sense of security. This legislation is firm and I believe that members of the community will feel more secure once it is implemented. We must ensure a measure of fairness. So far as I am concerned we must support the victims. The outcomes identified by David Heilpern in his well-researched study should not be ignored. The Opposition does not oppose this legislation, which, appropriately, will form part of an ongoing review. We must be mindful of the outcomes of that review for young offenders.

At all times we must apply the same principles that we apply in juvenile justice detention centres, with an emphasis on rehabilitation. I hope that the Government gives us a commitment that it will do what it can to ensure that these young people are not placed with older prisoners but will be housed in prisons for under 25-year-olds. We must also be mindful of the fact that some young people—even those who are found guilty of serious crimes—might be suffering from intellectual disabilities, mental illnesses or a variety of other problems. Those young people are not all inherently bad. Some of them suffer from an extraordinary range of problems that cannot be ignored.

It is fair to argue that young people under the age of 18—and there are many within our juvenile detention facilities—would probably benefit from not being in the company of detainees who have been found guilty of serious crimes. In the rehabilitation of young juvenile offenders it is appropriate to look more closely at prisoners who are over the age of 18 years. I am concerned about the issue of sexual assaults when many of these young people are moved into adult prisons. We cannot ignore the evidence or the studies that have been conducted in relation to this issue. The Government must be firm and fair when dealing with juvenile detainees and it must provide the community with a sense of security.

Those are the three principles to which I refer when determining policies in this area. The Government has not provided us with all the facts. It must inform us of its intentions in relation to young offenders. We need some sort of reassurance about the safety of young people in adult prisons. We cannot ignore the evidence. The Government must not simply state, "We are closing the door and moving young offenders into adult prisons." We want to know what will happen to those young offenders when they are transferred to the adult prison system.

**The Hon. RICHARD JONES** [5.07 p.m.]: I congratulate the Hon. Patricia Forsythe on her sensitivity when dealing with these issues. I share the concerns that she expressed about young people going to gaol. I and other honourable members have referred in this House to the prevalence of rape and assaults on young people. The Carr Government thinks it is okay to gaol 18-year-olds for possession of a single joint. The Government has done nothing to correct that anomaly. Young people are at risk of being raped or getting HIV as a result of being incarcerated. The Government has done nothing to prevent young people—about half of whom use marijuana—from being gaoled for that temporary habit.

It could be said that this Government is a hard core government, even on young people. This bill provides that, when a juvenile convicted of a serious indictable offence turns 18 he or she will automatically be transferred from a juvenile detention centre to a prison. However, if the court determines that special circumstances exist justifying the detention of a person in a detention centre, the court may determine that the juvenile should stay in the detention centre until the age of 21. However, upon turning 21, young offenders must be transferred to prison unless their sentences expire within six months of their birthday.

Currently, under section 19 of the Act, the court may, in respect of a person who is under the age of 21 years, make an order directing that the whole or any part of that term be served in a detention centre. In effect, the Government is taking away the court's discretion in relation to these matters. It means that child offenders, once they have reached a certain age, will be placed in adult correctional facilities regardless of their vulnerability or the appropriateness of the transfer. The department states that 29 persons who are currently over the age of 18 are in a juvenile justice facility.

The department notes that it is a management problem to have them there because it makes separation of adults and juveniles difficult. The department's reasoning is unusual. Separation in juvenile detention centres already takes place, just as it does within prisons. Surely the department will simply be transferring the mental problems to a different arena rather than addressing the cause. The Parliamentary Secretary's second reading speech in the other place refers to the integrity of the system of detention centres. He states:

This is a system focused on dealing with younger offenders. The presence of a significant proportion of older more serious offenders serving longer sentences can compromise the good order and rehabilitation focus of detention centres.

There are several points of interest in relation to that issue. First, the bill intends to ensure that all offenders over the age of 18 initially, and 21 definitely, are transferred to prison. This means that everyone, including less serious offenders who possibly may be participating in rehabilitation programs offered by the juvenile detention centre with great success, will automatically be forced into the prison system and risk being raped.

The parliamentary secretary in the other place stated that the number of detainees in centres under section 19 of the Children (Criminal Proceedings) Act 1987 had increased to 9.2 per cent of the total detainee population. Earlier in the same speech he said that providing alternative custody for less serious juvenile offenders resulted in a decline in the number of those offenders being detained. I doubt that the increased percentage of serious offenders detained has anything to do with an increase in the number of offenders, but rather is a reflection of fewer less serious offenders being held in detention. In 1972 Stanley Cohen's *Folk Devils and Moral Panics* coined the concept of the moral panic. This has had an enormous impact on research into the responses to deviant juvenile behaviour.

If the media and political message conveyed portrays juvenile crime as being on the increase and juvenile violence becoming increasingly serious, this moral panic becomes a reality requiring some kind of response. It is of little importance whether the actual trend in juvenile offending takes the form ascribed to it. In this way the more or less erroneous portrayal that juvenile crime is continually on the rise is seen as reflecting reality. Contributing to this phenomenon is that children are more likely to be caught by police than adults are, and this can give an inaccurate impression of the proportion of crime committed by juveniles. The reality is that it is difficult to measure accurately the nature and extent of juvenile crime.

A 1998 self-reporting survey of secondary school students conducted by the New South Wales Bureau of Crime Statistics and Research found that nearly half of the school students reported that they had participated in some form of crime in the last 12 months, and that many had offended only once or twice in their lives. The report concluded that juvenile offending is prevalent but transient. In 1996 the New South Wales Attorney General's Department review of juvenile crime statistics concluded that the overwhelming majority of juvenile crime is not serious, is not violent in nature, is directed at property, is not organised, generally involves the use of cannabis if drug related, is not significantly on the rise, and is very transient.

It should be remembered that young people are doing it tough and often are the victims of the last decade of economic reform in Australia. In New South Wales alone more than 500,000 children and young people live on or near the poverty line. The number of young people in out-of-home care has increased dramatically and youth suicide continues to increase. Policies that include education and training, employment, family support, community services, health—including drug and alcohol use—and policing have had a positive impact on these problems. Effective rehabilitative measures should be appropriately reflected in correctional environments. It is a grave error that juvenile offenders are typically perceived as predators who assault out of choice rather than being victims of a poor upbringing and difficult environment. Inevitably this has led to policy decisions that focus on punishment rather than rehabilitation.

It is well documented that the development of criminal behaviour correlates significantly with factors such as homelessness, family breakdown and abuse, learning problems and difficulty at school, unemployment, low self-esteem, boredom, depression, alienation and reactions to authority. Ensuring that juvenile offenders are accountable for their actions does not involve automatically throwing them in gaol at a certain age. Such actions will not meet the needs of the victim, do not appreciate the diminished responsibility of the youth offender and do not address the social and economic dimensions of juvenile crime. All evidence and research points to the fact that incarcerating juvenile offenders and adults is unjust.

The facts are that juvenile offenders are afforded special concessions and protections on account of their immaturity and vulnerability. Greater tolerance and leniency are the hallmark of good juvenile justice procedures in recognising that young offenders are still in the process of learning society's rules. It is considered unjust and unrealistic to hold young people to the same standards as adults. In addition, such measures do not appear to work. The sixteenth biennial conference of the Australian Crime Prevention Council in Canberra noted:

In many western countries the number of police officers, of prison inmates, and of prison sentences has reached record highs without any tangible improvement in the crime situation or in crime rates.

The report of the Attorney General's Department on juvenile crime in New South Wales noted that research has found that prisons do not rehabilitate offenders. The report noted that one study found that the chances of a prisoner being rearrested within two years of release were equal to the chances of arrest at the time of admission. The overwhelming evidence is that the onset of juvenile delinquency, poor educational performance and violent behaviour are deep rooted and often can be traced back to early childhood experience. The failure of punitive measures to deal with these issues is presently evident. A United States discussion paper for the sixth UN Congress on the Prevention of Crime and the Treatment of Offenders noted that every serious study of crime has identified the association between fluctuations in crime rates and changes in population, social values and economic conditions.

The mobile, independent, impersonal lifestyles and value systems that accompany economic development have had the negative consequences of rapid social change: increased social disorganisation, conflict and crime. The Australia Law Reform Commission said that placing a young offender in an adult prison does little to advance the rehabilitative aims of juvenile justice, particularly as contact with adult offenders has a tendency to further criminalise young offenders. This is particularly so if there are not adequate facilities to accommodate and deal with young people separately within the adult prison, or appropriate educational and other programs necessary for that age group. The inadequate facilities in gaols is not the only problem. It should be noted that the facilities can be inadequate also in juvenile detention centres. Juveniles are not living a life of fun and games in detention centres, as reported by irresponsible and ill-informed tabloid newspapers.

The New South Wales Ombudsman's 1996 inquiry into juvenile detention centres identified many shortcomings in the operation of centres. Its 2000 investigation into the Kariong Juvenile Justice Centre noted that inadequacies still were not addressed. The Ombudsman's 1996 report noted that some basic requirements such as clothing and food were substandard, and privacy and respect for individual and cultural differences were commonly ignored; the Department of Juvenile Justice was falling substantially short of best practice standards in a humane confinement of juvenile offenders; and the physical environment of almost every centre needed to be improved.

**The Hon. Carmel Tebbutt:** And has been since then. That was 1996.

**The Hon. RICHARD JONES:** In the last few weeks. The Ombudsman found dilapidated buildings and a generally oppressive atmosphere, reliance upon dormitory accommodation which is generally not conducive to detainees' safety or privacy, food that does not meet children's basic nutritional needs, clothing that is substandard and ill fitting, and unduly onerous restrictions on the type and amount of personal possessions, including letters, detainees may retain. This report followed an extensive review of the State's juvenile justice centres. Kariong was one of four centres identified as requiring the urgent action of the department. However, the department did not investigate the allegations concerning Kariong.

In March 1999 the Ombudsman undertook a formal investigation following allegations of staff abuse and mistreatment of detainees, in particular Aboriginal detainees, at Kariong. Kariong's general design and location make it unsuitable as the State's maximum security juvenile custodial facility. This and other related security concerns were pointed out to the department in a number of reviews, including the 1996 report of the Ombudsman, but little was done to address these concerns. However, I believe they have now been addressed.

**The Hon. Carmel Tebbutt:** They have indeed. In fact the Ombudsman has signed off on the changes at Kariong.

**The Hon. RICHARD JONES:** Although Kariong has a high proportion of Aboriginal detainees, the centre provided almost no programs or services to promote their cultural identity. Similarly, many staff seemed to have little appreciation of Aboriginal issues and culture. The report suggested the almost routine use of physical force and confinement in response to detainees exhibiting difficult behaviour. The Ombudsman recommended that the department refocus Kariong's role to provide distinct programs specifically designed in response to the needs of two groups. The first group comprises those who, because of the seriousness of their offence, or alleged offence, require placement in a maximum security setting for some period, possibly to permit an assessment of their needs and appropriate management; and the second group includes those who are considered unable to be managed within the normal rules and routines applicable in other centres and who pose a risk of serious harm and/or disruption to the operation of other centres.

In addition, the Ombudsman recommended that research be undertaken of current specialist management programs operating in other adult and juvenile institutional settings to determine the types of

behavioural approaches that may be effective for detainees in this group as well as the operational requirements involved. It should be noted that the Ombudsman did not recommend that juvenile offenders be carted off to gaols immediately upon turning 18, or at the latest 21, to address these problems. It can be acknowledged that to keep a person over the age of 18 in a juvenile detention centre setting could be detrimental to other detainees, depending on the personality of the individual. This should be assessed on a case-by-case basis.

When vulnerable teenagers are forced to move into the adult system they enter the system as naive and fearful 18-year-olds. Of course, the option to have a separate wing in gaols for young offenders is a good one; the question of how sustainable this is in relation to the increasing prison population is another matter. The number of persons over the age of 18 in detention centres is small at 29—according to the Government's figures that is not many at all. It is not appropriate to simply rely upon the age of the offender in determining the most effective sentence. Many 18-year-olds or 21-year-olds are emotionally and psychologically much younger. A streamlined case management system between juvenile centres and gaols provides for much more effective and appropriate management of young people rather than simply relying upon the age of the person.

Many young people in their early twenties are at risk in the adult correctional system. Justice Michael Kirby noted in his foreword to David Heilpern's recently released book on the incidence and consequences of prison sexual assault that the book does not make for pleasant reading, but should be read by scholars of criminology, judges, public officials, members of the media and other citizens. The study from which the book derives was based around a questionnaire which was answered by some 300 male prisoners aged between 18 and 25 in New South Wales institutions between 1994 and 1995. The Hon. Patricia Forsythe referred to that questionnaire. David Heilpern found that one in four males incarcerated in New South Wales prisons reported having been sexually assaulted while in custody, yet sexual assault in prison is rarely reported to the authorities. Other key findings were that younger, smaller and gay prisoners within the age range are at greater risk, the perpetrators of these assaults are almost always other male prisoners, and there is no evidence that separate prisons for younger prisoners lessens the risk.

The problem will not go away. That was acknowledged in the final report of the Select Committee on the Increase in Prisoner Population, which was tabled last month. The report noted that as at 30 June 7,750 full-time inmates were in New South Wales correctional centres. That figure represents 112.7 prisoners per 100,000 of the New South Wales population. That rate has been steadily increasing for more than six years. The inquiry found that 60 per cent of inmates are not functionally literate or numerate, 44 per cent are long-term unemployed and 64 per cent had no stable family. As juvenile offenders are more and more often portrayed as hardened young delinquents whom society needs to protect itself against, it is inevitably more difficult to show understanding for those youths who are portrayed as people who choose to commit other offences rather than being compelled to do so by other factors. Consequently, it becomes easier for all of us to profess outrage and to blindly follow the uninformed masses and promote incarceration in adult facilities.

The manner in which young offenders are punished should never be superficially addressed. Separate institutions were intended to protect juvenile offenders from being brutalised, harassed, exploited or badly influenced by adult prisoners. The process being instituted by this legislation brings that practice into serious question. Juvenile justice detention centres recognise that the nature of youth offending is distinct from adult offending. Offenders are separated according to age. The Department of Juvenile Justice notes in its annual report of 2000-2001 that many young offenders have experienced significant relationship problems in their families that have led to periods of homelessness, and that a large proportion have been affected by neglect or physical, emotional or sexual abuse. As a result, those juveniles have found it hard to relate to, or empathise with, others, especially adult authority figures. Many have difficulty managing their emotions and behaviour. They experience depression, instability, learning difficulties, poor self-esteem and drug and alcohol related problems, and many have attempted suicide.

When looking into this issue it is easy to find a case illustrating how this legislation will adversely affect juvenile offenders. The case I am referring to is *Regina v Essam Karhani* in the Supreme Court New South Wales and the Court of Criminal Appeal in 1998. In that case the applicant, who was 17 years old at the time he committed the offence, was sentenced to nine years penal servitude with a five-year non-parole period. Upon his twenty-first birthday the applicant was to be transferred from the juvenile detention centre to gaol. In appealing, the applicant did not submit that the sentence imposed was manifestly excessive. He simply sought orders that he be able to remain in the detention centre a few months longer to finish the Higher School Certificate examinations he was studying for before being transferred to gaol. His Honour said:

It has been submitted by the Crown that notwithstanding the appalling nature of the offence for which the applicant is convicted ... the public interest is likely to be protected and the applicant's sentence made no more or less onerous than it was when passed, if the applicant is allowed to complete his Higher School Certificate examinations without disruption, thereby facilitating his rehabilitation ... I propose that any necessary extension of time be granted.

Courts will not be able to make such orders under the proposed legislation, as there would be no grounds for appeal in the first instance. There is considerable doubt as to whether the public interest will be served as intended by this legislation. Given the many concerns I have outlined, in Committee I will move an amendment to provide that the Ombudsman review this aspect and that his report be laid before both Houses of Parliament. Given that the legislation has bipartisan support, it cannot be stopped. However, it can be carefully monitored. I thank the Opposition and the Government for the support they have already indicated they will give the amendment.

**Reverend the Hon. FRED NILE** [5.23 p.m.]: The Christian Democratic Party supports the Children (Criminal Proceedings) Amendment (Adult Detainees) Bill. The bill seeks to amend section 19 of the Children (Criminal Proceedings) Act to ensure that no person remains in a juvenile detention centre beyond the age of 21 unless the sentence expires within six months of that person's birthday, and that no person convicted of a serious indictable offence remains in a detention centre beyond the age of 18 unless special circumstances are established, unless the sentence expires within six months of that person's birthday. The Hon. Richard Jones said that juvenile detention centres were set up to get juveniles away from adult prisoners. That is the purpose of this bill.

Currently, if a person is convicted of a section 10 offence, which carries a maximum penalty of 25 years or life, section 19 of the Children (Criminal Proceedings) Act allows a judge to permit that person to spend part or all of that sentence in a juvenile justice facility. That can mean that the person remains in a juvenile justice facility beyond the age of 18. Currently there are 29 such offenders over 18 in the juvenile system who have been sentenced under section 19. Those serious offenders could be in their mid-20s before their sentences expire, so they will be adults. That creates a management issue for the department, which has to manage offenders who are anywhere between the ages of 13 and 25. It makes the separation of adults from juveniles difficult.

During one of the inquiries of the social issues committee members of the committee visited detention centres in various places. The point was made to us that one problem being experienced by staff was that the older person, who is now over 18 or even over 21, perhaps 24 or 25, often becomes a role model for the juveniles in the centre and has an influence on them far out of proportion to what one person should have. They look up to this person as being a more hardened or experienced criminal than they are. That is why many people say detention centres become universities of crime. That is one reason why these people should be separated.

Some honourable members have spoken about the danger of those being moved to adult prisons being sexually abused. Those older prisoners may be sexually abusing younger prisoners in the juvenile detention centres. That is another problem. I believe it is proper for the Government to deal with that situation by adding the provision that a sentencing judge will have the discretion to order that a person serve a sentence in a juvenile detention centre until he is 21 if the judge assesses the person as being vulnerable or unsuited to prison. Some people have low intelligence—perhaps they are not fully developed mentally—and those people could be vulnerable in an adult prison. Even though the person may be physically older, the legislation allows for special consideration to be given to those who are vulnerable to abuse in the adult prison.

The argument could be made that the Government should consider halfway houses for older persons. In other words, they do not go to an adult prison but are separated from the juveniles in the detention centres. Again, that gets back to facilities, staff, money and all those matters. We do not live in an ideal world, but halfway houses may be another possibility down the track. We support the legislation. It should be given a fair trial and then we can watch what eventuates.

**Ms LEE RHIANNON** [5.28 p.m.]: The Greens strongly oppose this bill. The bill stipulates that once detainees in the juvenile justice system turn 18 they will automatically be transferred to an adult prison unless the sentencing court can be satisfied that there are special circumstances. That will lead, as other honourable members have said, to the brutalisation and rape of young detainees. It will also dramatically reduce the prospects of rehabilitation for countless young detainees. Some of those young people have committed horrendous crimes, but let us remember that they have been gaoled in the juvenile justice system—

**The Hon. Doug Moppett:** Detained.

**Ms LEE RHIANNON:** But "detained" also means that their freedom has been curtailed. It is the punishment the court has determined. They have served that punishment and, notwithstanding all the fine words that have been said here about how we must be aware of the brutality and possibility of rape, sooner or later the door will close on those young people when they are put into the adult gaol. They will be on their own, and that is when the brutality, the rape and the absolute misery kicks in. That is what is so damaging to those people.



Despite any special circumstances, we understand that under the bill no detainees may remain in a juvenile detention centre once they turn 21. For both of these age thresholds—that is, the 18-year-old and the 21-year-old stipulated in this bill—there is an exception if the individual in question becomes eligible for release within six months of his or her birthday. When approaching this issue we need to ask ourselves: Who are the individuals we are dealing with? In most cases the answer is young people who committed an offence, who made a mistake when they were very young. Often these young people are the product of terrible circumstances: dysfunctional families, abuse, neglect and, often, addiction.

It would be nice to think that the juvenile justice system is about helping and supporting people. The Greens acknowledge that, to a large extent, that is the case. But when we come to legislation like this we must ask what is the driving force behind it, because Juvenile Justice has a good record these days. It can proudly say that the number of detainees is decreasing. The Greens are disturbed by this legislation. Juvenile Justice needs to be about providing rehabilitation, education and training to assist young detainees to build a life for themselves when they are released. To a large extent that is what occurs but this legislation, for the young people concerned, is returning our justice system to the dark ages.

**The Hon. Doug Moppett:** Don't you think it would be better to have young offender centres that cover not only juveniles who pass the threshold but other young people who are convicted, perhaps when they were 18 or 19, and keep them out of the adult system?

**Ms LEE RHIANNON:** I understand what Mr Doug Moppett is saying. The Greens are saying that these young people, some of whom may be 24 or 25, should not be put into the adult system. We are not talking about a large number of detainees.

**The Hon. Doug Moppett:** But it is not a good idea to keep them in a juvenile justice centre either.

**Ms LEE RHIANNON:** Yes. For a small number, and I think the Hon. Dr Arthur Chesterfield-Evans has information about the number of detainees we are talking about—

**The Hon. Doug Moppett:** It won't be many.

**Ms LEE RHIANNON:** Precisely, it is not many. Considering that Juvenile Justice must have saved some money with the reduction in detainee numbers, surely something more humane than an adult prison could be found. It is not good enough to use the fine words we have heard tonight. We must be careful to ensure that people are not raped, and if young people are put into adult prisons that is what will happen. When juvenile justice detainees are released they are, in the main, still relatively young people and, in most cases, at a momentous crossroads in their life. Will they go on to become independent members of society, or will they take the tragic path of recidivism, continuing the cycle of poverty and abuse that dominates the lives of so many young people?

As parliamentarians we have a responsibility to these young people. They may have committed a crime, but we must remember that they have been punished for that crime. The key is that we as a society must not abandon them, and we must not abandon them to the brutality of an adult male prison. We should help them by providing the foundation and skills for them to build lives for themselves outside gaol. In that context, this bill represents an enormous backward step. As I said, it is a blot on the copybook of Juvenile Justice. It is unfortunate that the Minister for Juvenile Justice has had to shepherd this bill through the House. Automatically transferring detainees to adult prisons once they turn 18 will inevitably lead to many cases of rape, assault and brutality. That cannot be emphasised enough, but it is what we are delivering with this legislation.

Adult prisons are not places of rehabilitation; rather, they are brutal environments where the weak and the vulnerable suffer tremendously. Earlier the Hon. Patricia Forsythe said that she had never been inside a gaol. Nor had I been inside a gaol until I served on the committee inquiring into the increase in prisoner population. However, when I undertook that work with colleagues in this place I had the opportunity to visit many gaols. It was the most shocking experience of my life. Obviously, I was not there overnight. I was there for only a few hours, but it was like going back to the nineteenth century. It was particularly disturbing to see so many young men and so many young black men, Kooris and Torres Strait Islanders. It is a terrible indictment of society that we have not sorted that out. With this legislation, we are going down a track that will make us a cruel and hard society. Indeed, it will deliver more hardened criminals.

Imagine you are a young person who committed a crime; you have served your time in juvenile justice, you have some hope, you have been doing some good programs. Suddenly you are put in an adult prison; the

door is shut and the brutality starts. You will not have many kind thoughts about a society that does that to you. We know the massive disruption that that causes to people's lives. It will be a destructive and traumatic experience for young people who are put in an adult prison. Young prisoners will become hardened. They will be exposed to a violent adult world, thereby placing in jeopardy any rehabilitation that may have occurred in the juvenile justice system. In Committee the Greens will move amendments to address those shortcomings. It must be said that the Government has yet to articulate a decent argument as to why the change is necessary. We have not yet heard why the change is necessary, particularly when we are talking about so few young prisoners. Can we not at least find some other measure, rather than sacrificing them to adult male prisoners?

It is clear to all that this measure is being driven by the fear of tabloid headlines—we are back to that old one again—and the fear of being regarded as soft on young people who commit crimes. Once again the Government is putting the politics of fear and prejudice ahead of the politics of humanity and compassion. I urge honourable members not to lose sight of the fact that that is essentially what is happening with this bill. Any left-of-centre party and any member who says that he or she is on the left must have great difficulty speaking and voting for this legislation. Any progressive party that wishes to continue to have legitimacy must based itself on human values. The Labor Government is on borrowed time if it does not find its humanity.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.38 p.m.]: The Australian Democrats oppose this bill. To be honest, I am a little shocked by the bill. In the Minister's second reading speech there was no good rationale for this bill. The figures for the number of people who will be affected by this bill are interesting and relevant, given that the adult prisoner population is expanding in leaps and bounds, new prisons are being built all the time and, I thought due to the enlightened regime of Juvenile Justice, the number of prisoners has fallen quite dramatically. The numbers of people in juvenile detention as at 20 November 2001 were 12 aged 19, nine aged 20, two aged 21, one aged 22 and two aged 23, a total of 26. That is 26 over 18 and only three over 21.

It seems extraordinary that today we are being asked to pass a bill to effectively move between three and 26 people from juvenile justice centres, where the number of prisoners—I suppose that is the right word—has decreased dramatically, to an overcrowded prison system. It would seem that the rhetoric has changed a little, but the reality has not, if my experience as a member of the Select Committee on the Increase in Prisoner Population is any guide. I must confess I had not been to a goal before I became a member of that committee and, like Ms Lee Rhiannon, I was somewhat shocked. Although I thought that goal facilities generally equated to something in the nineteenth century, the old part of Grafton goal reminded me more of a zoo than a prison. The bars were similar to those in a zoo and the way the people were crowded together was appalling.

The bill forms part of the Government's law and order agenda. People think of goals as places of punishment, and it would appear that people do not have much sympathy for young offenders. I suppose they see them as strong and destructive, with baseball caps on backwards, perhaps as members of gangs, destroying things that have taken other people a great deal of time to acquire, and bashing people without regard for their vulnerability. Society tends to view this issue as a single event with a victim and a perpetrator. If you have sympathy for the victim, you do not have any sympathy for the perpetrator. That is one way of looking at the issue. It is difficult to engender sympathy for the perpetrator of a crime.

If someone is young and impulsive, that youth and impulsiveness may lead to the commission of a fairly horrendous crime. That may be the result of a degree of social misfitting, inexperience or immaturity that is not in itself hugely criminal. I recall talking to a fellow who worked as a psychologist within the prison system. I said to him, "There seem to be a lot more crimes committed by young people. Are the kids getting worse?" He said, "No, the crimes are getting worse but the kids are actually much the same." Sometimes the perpetrators of criminal offences do not have an evil intent so much as an inability to deal with their impulses because they are immature. That has numerous implications with regard to the way these people should be managed and the way that we, as law-makers, structure society.

We have to go beyond revenge and look at the fact that these people will live for many years. Often they come from deprived backgrounds that have left them emotionally immature and with a sense of distrust or even anger. That anger must be managed, otherwise an angry child will become an extremely angry adult and may even become a sociopath or a psychopath. Such a child is unlikely ever to conform to the norms of society, and, effectively, must be gaoled for the protection of society. However, such people obviously need to be given the maximum possible chance. Some of them have been through a brutalising or unpleasant childhood and the last stage of their rehabilitation is the artificial family—stability, if you like—that the enlightened regime of the juvenile justice centres might give them. Suddenly they are told, "You have hit 18 or 21, in you go with the most

brutal people in society. If you thought you were making progress, if you thought there was some humanity, you are sure going to cop a dose of reality now." The likelihood of such people not reoffending after serving their goal term must surely be very slight.

This bill seeks to move a handful of detainees who, for one reason or another, continue to serve their sentences in juvenile detention centres although they are adults. The Minister interjected earlier that they are murderers. That suggests that, once you look at the crime, you must immediately respond in a certain way to the perpetrator. Once they have crossed the line, for whatever reason, it is no longer possible for them to be treated in a rational manner. It is worrying that the Government is responding in the way in which people instinctively respond. I believe people do respond instinctively. One does not have to be abnormal to respond in the fashion, but I believe we do not have to respond to everything society wants; we have to respond as leaders of society would respond. We do not have to implement what the average person in the streets seeks; we have to take that as are starting point.

If that were the case, it would be better for the Government to be run by a pollster who would poll the community on every issue and act on the results. We should provide leadership, and that includes improving the lot of the vulnerable in our society. In this instance the perpetrators are the vulnerable. We need to look at the damaged young people to see how that damage might be fixed. I believe that going from the relatively uncrowded environment of a juvenile justice centre—because the number of detainees has decreased dramatically—where the objective is therapeutic to an adult prison where the object is detainment and punishment is certainly dangerous for young people. As I said, although the rhetoric may have changed, the reality has not.

Under this bill the sentencing court may direct that a person aged under 21 who is guilty of an indictable offence may serve the whole or part of the sentence in a juvenile detention centre. One might regard that as enlightened. However, after the detainee turns 21, he or she will automatically be transferred to serve the remainder of the sentence in an adult goal unless the sentence expires within six months of his or her birthday. Juveniles sentenced by an adult court for a serious indictable offence will be sent to an adult goal at the age of 18 to serve the remainder of their sentences, unless the sentencing court is satisfied that the detainees' special circumstances would necessitate those juveniles serving the remainder of the sentence in a juvenile detention centre, or the remainder of the sentence expires within six months of their eighteenth birthday.

Under proposed section 19 (5) the detainee must seek the leave of the sentencing court to apply for an order to remain in a detention centre. The provisions of the bill will apply only to detainees sentenced after the commencement of the Act. The Australian Democrats are concerned about the safety of people transferred from detention centres to the general population of adult prisons. That is the paradigm of juvenile justice centres and adult goals. The Australian Institute of Criminology paper No 103, released in February 1999, dealt with prison homicide in Australia in the period 1980 to 1998. It showed that in the period 1 January 1980 to 31 December 1998 there were 58 prison deaths in the 15-year-old to 19-year-old age group, which accounted for 7.7 per cent of deaths; and 145 deaths in the 20-year-old to 21-year-old age group, which accounted for 19 per cent—the highest number of deaths in any given five-year age group.

Of those, one in the group aged 15 to 19 was a homicide, and 10 in the group aged 20 to 24 were homicides. There is obviously some risk to young people incarcerated in adult goals. The New South Wales Law Society has indicated its considerable concern about this bill. Mr Robert Fitzgerald, the Community Services Commissioner, does not support the bill either. In a briefing note provided to crossbench members the Law Society made the following observations:

Neither the Law Society's Criminal Law Committee nor its Children's Legal Issues Committee support this proposal. The Committees recommend that the bill will be withdrawn.

The Committees are concerned that it will be extremely difficult for the court to determine that special circumstances exist in a particular young person's case, given that:

- New South Wales adult prisons are so overcrowded that the Department of Corrective Services is unable to efficiently deliver rehabilitative and integrative programs to its inmates,
- drugs can be readily obtained in adult prison facilities, and
- safety of young people in mainstream prison cannot be guaranteed.

Section 19 of the Children (Criminal Proceedings) Act currently provides that the court, when sentencing a person aged under 21 years to a term of imprisonment in respect of an indictable offence, may make an order directing that the whole or any part of the term of that sentence can be served in a juvenile detention centre.

The Committees see no reason why the discretion of the sentencing judge under section 19 should be changed and limited as proposed, given the broad discretion that resides in the Minister for Juvenile justice.

The alternative recommendation from the Law Society is that if the Government proposes to proceed with this legislation—

**The Hon. Carmel Tebbutt:** We are supporting that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** —the committees would support the amendment of the bill by substituting "non-parole period" for the word "term" where it appears. I note the interjection of the Minister that the Government has accepted that. Magistrate David Heilpern's study of the incidence of sexual assault in New South Wales prisons presents an appalling picture of the experiences of young persons in prisons. At least one in four male prisoners aged 18 to 25 is sexually assaulted in prison and one in two prisoners is physically assaulted. So if the aim of the Government is to rehabilitate young offenders it should not proceed with the bill. Rather than the Opposition just making sympathetic noises and supporting the Government, it should take a stand. It will be difficult for juvenile offenders who go to adult prisons to avoid becoming re-offenders. We oppose the bill and we will support the Greens amendments and other amendments that mitigate the effects of the bill.

**The Hon. IAN COHEN** [5.51 p.m.]: I wish to add to and support the remarks of my colleague Ms Lee Rhiannon. The Greens oppose the bill, the aim of which is to limit the number of adult detainees in juvenile detention centres. Currently 29 offenders over the age of 18 are in the juvenile system. If juveniles are convicted of a serious indictable offence they are unable to remain in juvenile detention centres beyond their eighteenth birthday unless "special circumstances" exist and are established or if their sentence is due to expire within six months of their birthday. The bill will also prohibit juveniles who have reached the age of 21 from remaining in a juvenile detention centre unless their sentence expires within six months of their birthday. The Greens are concerned about the negative impact of this new policy on offenders who are transferred from the juvenile system to the adult system.

I have three major concerns regarding this policy. First, there is the issue of the young person's safety. It is well known that young people are in great danger of being raped and bashed in adult prisons. It is almost an inevitability. Regardless of the crime of those imprisoned, this amounts to torture during incarceration. The study by David Heilpern developed into the book *Rough Justice*, which a number of members have referred to in this House tonight. During the last Parliament I mentioned that I went to the launch of the book and subsequently purchased a copy and read it from cover to cover. It is a shameful and absolutely shocking revelation of the types of sexual and physical abuse that occur in the New South Wales penal system. It is an eye-opener to the psychology of victims who experience horrendous physical and sexual torture. The situation is truly medieval.

I wonder that any government or member of Parliament could see it as acceptable to do anything that in any way increases the incidence of abuse. Gaol is punishment enough, even for those who have committed serious crimes. It is shocking to allow physical and sexual violence, particularly in adult institutions, to be the norm against these people. David Heilpern is now a magistrate on the South Coast. I understand that he was a magistrate out in the Wellington area before that.

**The Hon. Carmel Tebbutt:** Is that significant?

**The Hon. IAN COHEN:** Only in that he is part of the judicial system. He understands the implications of casting young people into gaol, particularly indigenous young people, in vastly disproportionate numbers to their representation in society.

**The Hon. Doug Moppett:** Why would a judicial officer understand that better than anyone else?

**The Hon. IAN COHEN:** One would imagine that he is dealing with those responsibilities on virtually a daily basis, so I would suggest that he may well have a very specific perspective on these matters from his role as a magistrate and also from his studies. There was a very high incidence of sexual and physical assault of young prisoners. Mr Heilpern's research suggests that at least 25 per cent of male prisoners aged 18 to 25 are sexually assaulted in prisons and 50 per cent are physically assaulted. Physical and sexual assault can have enormous physical and psychological impacts on young people and significantly impede their chances of rehabilitation. It may in fact completely turn around any progress toward rehabilitation. It is likely that it has led to depression, anger and suicide. My second concern is that individuals have greater access to drugs in adult gaols.

Third, adult prisons are extremely overcrowded and, according to the Law Society, the Department of Corrective Services is unable to efficiently deliver rehabilitative and integrative programs to its inmates. The Minister referred in her second reading speech to the fact that there is a management problem with regard to adult detainees in juvenile detention centres. This is the reason for the bill. We are advised that the majority of the adult detainees are accommodated in the Frank Baxter Detention Centre. Only one detainee who is over 21 years of age is detained elsewhere. Rather than run the risk of individuals such as this being raped, bashed and generally brutalised by the adult system, is there not another way of managing such individuals in the current system?

It has been suggested that part of Frank Baxter could be put aside to house offenders who are older than 18. The detainees in Frank Baxter could then have special programs aimed at them. Then they would not disrupt the under-18s and we could all rest assured that they are not being brutalised by the adult system. When Ms Lee Rhiannon was speaking earlier the Hon. Doug Moppett spoke of the option of having a type of halfway house such as this. More judicial discretion than is currently provided for in the bill is needed when determining whether or not a young person should be transferred to an adult gaol. Then all aspects of an individual's vulnerability, likely rehabilitation progress and a whole range of other matters would be taken into consideration when a judicial officer determines whether a young person should be transferred to an adult prison. Along with Ms Lee Rhiannon and the Greens in general, I strongly oppose the bill as it presently stands.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [5.58 p.m.], in reply: I thank honourable members for their contributions to the debate which, on the whole, have been thoughtful. I have not necessarily agreed with them all. This is not necessarily an easy policy issue. The bill needs to be seen in the context of the Government's overall approach to the management of juvenile justice in New South Wales. A number of members—in particular, the Hon. Richard Jones—referred to the 1996 Ombudsman's report, which was very critical of the juvenile justice system in New South Wales. It was critical for good reason: many changes needed to occur. I pay tribute to the Hon. Ron Dyer, the former Minister for Juvenile Justice and Minister for Community Services, who instigated the 1996 Ombudsman's report.

After the election of the Carr Labor Government in 1995 he could see the need for a thorough examination of juvenile justice in New South Wales and he was brave enough, as the responsible Minister, to open up the system to the Ombudsman to determine how the Government needed to change it. That was in 1996, and we had been in government for only one year. Since that time the Government has put in place numerous reforms to the juvenile justice system and has expended large amounts of money to improve the system. I will not spend a lot of time going through those reforms in detail; I have done so previously on numerous occasions in the House. However, I must say that in the past two years the Government has closed two outdated centres that were criticised in the Ombudsman's report and it has opened three new ones.

The recent budget provided additional funding to replace the young women's centre as well as to make significant changes at other centres that are in need of refurbishment. Staff induction training has increased from four days to more than 20 days and staffing levels have increased. An entirely new staffing formula arising from the Council on the Cost and Quality of Government review is in the final stages of negotiation with the Public Service Association. This bill is just one plank in a carefully planned platform for a well-funded overhaul of the way the juvenile justice system operates in New South Wales. It is just not correct for some members of the Opposition—the Hon. John Jobling did this—to claim that this bill in some way is a response to Opposition policy. I read the *Hansard* report of the debate in the Legislative Assembly—not surprisingly—in which the Opposition spokesman stated:

Serious criminals who are over the age of 18 should not be held in juvenile detention centres. That is our policy, as enunciated by me in September in the *Sunday Telegraph*.

When one checks the *Sunday Telegraph* to read what the Opposition spokesman said, it can be seen that what was said by him in the lower House was not conveyed quite correctly. The *Sunday Telegraph* stated:

Although Opposition policy is yet to be finalised, Mr Hartcher said he would push for the Liberals to formally adopt a policy under which serious young offenders would serve out their time in adult gaols once they turn 18.

Clearly, in the Opposition spokesman's own words, the Opposition did not have, and still does not have, a policy on this issue. It is simply incorrect to state that in some way the Government is stealing the Opposition's ideas. That is not the case. As I have pointed out, this bill is part of an overall process of review and change in juvenile justice that commenced on the day that Labor got into government in 1995. I place on the record that being able

to separate older and younger offenders will increase the Government's ability to handle these problems. The majority of people in custody in the juvenile justice system are younger offenders, but there are some other issues that need to be addressed in terms of comments made by some honourable members.

The amendment that the Hon. Richard Jones will move during the Committee stage—to have the policy reviewed by the Ombudsman after three years—will be supported by the Government. The Attorney General indicated in his second reading speech in the other place that it was always the Government's intention to have the Ombudsman review this legislation because he recognised that as a change and as something that needs careful monitoring. The Hon. Richard Jones wants to see that reflected in legislation and the Government is happy to go down that path.

**The Hon. John Jobling:** And we agree.

**The Hon. CARMEL TEBBUTT:** The Opposition has indicated its agreement. The Hon. Patricia Forsythe made a series of comments in her fairly lengthy contribution to the debate. I do not wish to take issue with all of them, but I wish to say very clearly that I do not agree with the honourable member's view that we are in some way moving from a focus on rehabilitation to a focus on retribution and deterrence. That is simply not the case. This bill does not in any way reflect the Government moving away from its commitment to rehabilitation of either young or old offenders. Rehabilitation is the stated aim of both the Department of Juvenile Justice and the Department of Corrective Services. As the Minister for Juvenile Justice I have to be mindful of our ability to maximise the rehabilitation of all detainees. This can be compromised by older detainees, who are becoming a big group within the overall juvenile justice system.

A number of people felt that coherent argument had not been put forward on why this legislation is necessary. I think, if they hold that view, they have failed to carefully read the second reading speech. Over time the Government has pursued a policy of diverting less serious offenders from custodial sentences and putting in place other options so that those less serious offenders are diverted. That is reflected in a declining number of young people who are in custody. Having said that, I point out that the older group—those who are 18 years of age and over—who have been sentenced under section 19, namely, serious offenders, are becoming a bigger group than they used to be. Between 1999 and the current year that group has increased from 6.9 per cent of the total juvenile detainee population to 9.2 per cent. Quite clearly, the group is becoming bigger in the juvenile justice system and system has not been set up to cater specifically for that group.

On the whole the juvenile justice system was established to deal with young offenders between the age of 10 and 18 years, and that is clearly the rationale for this legislation. I believe that the bill has been drafted carefully enough to include exemptions at the time of sentencing, if a judge feels that a particular offender is vulnerable or there are other reasons why the offender should not be moved to the adult system at age 18. That is clearly catered for within the bill. A number of honourable members indicated during their contributions to the second reading debate that this policy would apply to all detainees—that they will all move across to the other system at age 18. Again, that is not the case. Those who are convicted of a serious indictable offence will move at age 18. There is a very good reason why that group will move across: they have long sentences. Some of them were convicted at age 17 and received sentences of five years or six years. They remain in juvenile justice, but that is not appropriate. Our system primarily is not set up to deal with the group. I believe it is better for them to be in the adult system. That decision should be made by the judge at the time of sentencing because, in that way, their case management can be properly put in place for the whole of the sentence.

A number of honourable members referred to the David Heilpern report. I place on record a couple of comments about that report. First, it is based on a 1994 self-reporting study of a very small number of inmates—I believe it was 183. I do not mention that to indicate an intention to ignore its findings but I believe that it means that the findings should be put into context. There are many limitations to the study, as Mr Heilpern admitted. Nonetheless, I believe that people have legitimately and genuinely raised an issue of concern about those who are young within the overall adult system to ensure that appropriate strategies are put in place to properly provide for that group of younger offenders. The Department of Corrective Services has a number of strategies in place to reduce the incidence of sexual assault, which is consistently reported as involving less than half of 1 per cent of inmates. I also make it very clear that it is the Government's intention that the group of young offenders who move across to the adult system will be accommodated within the young offender program whenever possible.

A number of honourable members mentioned the need for having some type of halfway house. The Department of Corrective Services already has a young offender program, which operates for people who are

between the ages of 18 years and 25 years. It is the Government's intention, as I mentioned earlier, that this group would be accommodated within that program whenever possible. I have visited Parklea gaol where the Young Offenders program, or part of it, is in operation. I have to say that because of the size of the adult system—and I accept that that brings with it some concerns—from what I saw it offers opportunities to older offenders that juvenile justice could never offer them. Honourable members must bear in mind that the juvenile justice system in total deals with approximately 300 detainees on any one day.

The opportunities that are available for younger offenders within the adult system at Parklea to complete apprenticeships or to undertake vocational training are by far above what can be offered in the juvenile justice system—understandably, because the juvenile justice system is set up to deal with a younger group of people. The juvenile justice system has schools. Some vocational training is offered, but it is nowhere near what can be offered in the adult system. The Department of Juvenile Justice is currently reviewing its security classification system for all detainees. The Department of Corrective Services is also involved to try to ensure that the smooth transfer of detainees from the juvenile justice system to the young offenders program will be facilitated. The Department of Corrective Services will be involved in the process of review of the classification.

A number of other issues will be discussed at length during the Committee stage, so I will conclude my comments by stating that I recognise that this is an issue about which people have strong feelings. It is certainly the view of the Government that the way the bill has been framed constitutes a sensible approach to dealing with the issue. It is simply not appropriate for young offenders to remain in juvenile justice until they are 25 or 26 years of age, which is what is currently happening. The approach encapsulated by the bill ensures that those who are convicted of a serious indictable offence will move to the adult system at age 18. They are the people who have been given the longer sentences, and adequate discretion has been provided for a judge to make a decision not to move a young person at age 18 if that young person is vulnerable. It also provides scope for a young person to apply to the court not to be moved. I believe that the bill takes a sensible approach to a difficult issue. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

### **In Committee**

**Clauses 1 to 3 agreed to.**

#### **New Clause 4**

**The Hon. RICHARD JONES** [6.11 p.m.]: I move:

Page 2. Insert after line 9:

#### **4 Monitoring by Ombudsman**

- (1) For the period of 3 years after the commencement of this section, the Ombudsman is to keep under scrutiny the operation and effect of section 19 of the *Children (Criminal Proceedings) Act 1987* as substituted by this Act.
- (2) For that purpose, the Ombudsman may require the Director-General of the Attorney General's Department, the Director-General of the Department of Juvenile Justice or the Director-General of the Department of Corrective Services to provide information concerning the participation of the Department concerned in the operation of that section.
- (3) As soon as practicable after the expiration of that period of 3 years, the Ombudsman must prepare a report as to the operation and effect of that section and furnish a copy of the report to the Attorney General, the Minister for Juvenile Justice and the Minister for Corrective Services.
- (4) The Attorney General is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Attorney General receives the report.
- (5) If a House of Parliament is not sitting when the Attorney General seeks to lay a report before it, the Attorney General may present copies of the report to the Clerk of the House concerned.
- (6) The report:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and

- (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
- (d) is to be recorded:
  - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
  - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

During the second reading debate in the lower House the Government outlined its intention for the Ombudsman to conduct a review of the first three years of the operation of the amendments contained in this bill. However, there are no statutory provisions included in the bill as it currently stands to ensure that that happens. Therefore, my amendment requires that the Ombudsman monitor the operation of this section for three years after its commencement and then furnish a report to the Attorney General, the Minister for Juvenile Justice and the Minister for Corrective Services. The report is then to be tabled before both Houses as soon as practicable after it is received. Given the raft of concerns raised in relation to this bill, my amendment is important to ensure that the provisions are closely monitored.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [6.13 p.m.]: The Government supports this amendment. As outlined in the second reading speech in the other place, the Government was proposing an Ombudsman's review and we are happy to have that included in the bill.

**The Hon. JOHN JOBLING** [6.13 p.m.]: The Opposition supports this amendment for the reasons outlined in our contribution to the second reading debate. This is an excellent idea. The monitoring of this provision by the Ombudsman for three years after the commencement of the Act to keep the scrutiny of the operations under an effective review and the fact that a copy of the report is to be laid before both Houses as soon as practical are supported.

**Reverend the Hon. FRED NILE** [6.14 p.m.]: The Christian Democratic Party supports the amendment. In my contribution to the second reading debate I spoke of the need for monitoring and observing the impact of the bill. This amendment will ensure that that happens.

**New Clause 4 agreed to.**

## Schedule 1

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [6.15 p.m.], by leave: I move Government amendments Nos 1 and 2 in globo:

No. 1 Page 3, schedule 1 [1], proposed section 19, lines 12-15. Omit all words on those lines. Insert instead:

- (2) A person is not eligible to serve a sentence of imprisonment in a detention centre after the person has attained the age of 21 years, unless:
  - (a) in the case of a sentence for which a non-parole period has been set - the non-parole period will end within 6 months after the person has attained that age, or
  - (b) in the case of a sentence for which a non-parole period has not been set - the term of the sentence of imprisonment will end within 6 months after the person has attained that age.

No. 2 Page 3, schedule 1 [1], proposed section 19, lines 23 and 24. Omit all words on those lines. Insert instead:

- (b) in the case of a sentence for which a non-parole period has been set - the non-parole period will end within 6 months after the person has attained that age, or
- (c) in the case of a sentence for which a non-parole period has not been set - the term of the sentence of imprisonment will end within 6 months after the person has attained that age.

The purpose of amendment No. 1 is to address a technical difficulty with the sentencing provisions that have been identified in the course of consulting on the bill. The intention of subsections (2) and (3) (a) of section 19



is to ensure that a person is not transferred to an adult prison in the period immediately prior to his or her release. The reason for that is clear, but the chances of a person's successful reintegration would be jeopardised if the person is transferred from juvenile detention to an adult prison a matter of weeks before release. It is also unreasonable to expect that Corrective Services would be able to place, assess and commence an appropriate program for release for a person in such a short time frame.

However, that intention is not reflected appropriately in the current drafting of the bill. Because the bill refers to "the term of the sentence of imprisonment" the actual date of release will not be taken into account in assessing eligibility under the provisions. This amendment has been moved to address that anomaly. The amendment achieves the original intent of the bill. A person would not be transferred to an adult correctional facility if the person's non-parole period ends within six months of his or her relevant birth date.

**The Hon. JOHN JOBLING** [6.15 p.m.]: The Opposition accepts amendment No. 1. It corrects a technical difficulty and we are happy to support it. The amendment deals effectively with the transfer. Mr Chairman, I presume that if Government amendment No. 1 is agreed to, that would negate amendment No. 1 proposed by the Greens.

**The TEMPORARY CHAIRMAN (The Hon. Dr Brian Pezzutti)**: Order! That is true. I will allow the Greens to move their amendments and I will then put the question on the Government amendments. If the Government amendments succeed, I will not put the question on the Greens amendments.

**Ms LEE RHIANNON** [6.15 p.m.], by leave: I move Greens amendments Nos 1, 2 and 3 in globo:

No. 1 Page 3, schedule 1 [1], proposed section 19, lines 12-15. Omit all words on those lines. Insert instead:

- (2) If a person attains the age of 21 years while serving a sentence of imprisonment in a detention centre under an order under subsection (1), the Minister may apply to the sentencing court for an order terminating that order (*a terminating order*), unless:
  - (a) in the case of a sentence of imprisonment for which a non-parole period has been set - the non-parole period will end within 6 months after the person has attained that age, or
  - (b) in the case of a sentence of imprisonment for which a non-parole period has not been set - the term of the sentence of imprisonment will end within 6 months after the person has attained that age.

No. 2 Page 3, schedule 1 [1], proposed section 19, lines 16-33. Omit all words on those lines. Insert instead:

- (3) On application by the Minister, the court may make a terminating order. In determining whether to make a terminating order, the court may have regard to the following matters:
  - (a) the degree of vulnerability of the person,
  - (b) the likelihood of the person being assaulted at the place the person will serve the sentence of imprisonment,
  - (c) the availability of appropriate services or programs at the place the person will serve the sentence of imprisonment,
  - (d) the likely impact of the terminating order on the rehabilitation of the person,
  - (e) any other matter that the court thinks fit.

No. 3 Page 4, schedule 1 [1], proposed section 19, line 1. Omit "this section". Insert instead "subsection (1)".

The intention of the Greens amendments is to protect young detainees from the harm that may come to them if they were to be transferred to an adult facility, and to maximise the chances that young detainees will be released from prison rehabilitated and able to make a new life for themselves. As the bill stands young detainees will be automatically transferred to an adult prison at the age of 18, unless the sentencing court can be satisfied that there are special circumstances, or unless the detainee would be eligible for release within six months of his or her eighteenth birthday. In any event, no detainee can remain in a juvenile detention centre once he or she turns 21 with the same six-month release clause applying.

The Greens amendments provide that offenders remain in the juvenile justice system until they are 21. Furthermore, rather than the transfer be automatic, the Minister would have to apply to the sentencing court for an order to send the person to an adult facility. On application by the Minister, the court may have regard to matters such as the likelihood of the detainee being assaulted, the availability of appropriate services or

programs, and the likely impact upon the rehabilitation of the person. For the members who said during their contribution to the second reading debate that they had concerns about the possibilities of assault and rape when young people went to gaol, this provides a very clear mechanism of protection to ensure that that does not happen. I commend the Greens amendments to the Committee.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [6.19 p.m.]: The Government does not support the Greens amendments. The amendments negate the purpose of the bill: to have placement fully resolved at sentencing. This allows long-term case planning in the best interests of all persons covered by the provisions. It is simply inappropriate, as well as clumsy and time-consuming, to have the Minister applying to the court in every case. To a certain extent it also duplicates powers that already exist under section 28 of the Children (Detention Centres) Act.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [6.19 p.m.]: I support the Greens amendments, particularly having regard to the Minister's statement that the rehabilitation plan is devised at the time of sentence. In attempting to rehabilitate a person through the juvenile justice system one needs to see what progress has been made and then make a decision in the individual case. It is nonsense to suggest that rehabilitation must take place according to a sentencing formula. Some people will be rehabilitated and some will not. Therefore, the decision about rehabilitation should be made in the individual case. The suggestion that justice does not exist for each individual is retrograde.

**The Hon. Dr PETER WONG** [6.20 p.m.]: I also support the Greens amendments. I accept that the Minister has done a good job and that the bill's objectives are very good. However, as the Hon. Dr Arthur Chesterfield-Evans said, it is difficult to assess the degree of rehabilitation required unless the progress of the juvenile offender is monitored closely and, therefore, it is virtually impossible to make such a decision early on.

**Reverend the Hon. FRED NILE** [6.21 p.m.]: The Christian Democratic Party does not support the Greens amendments. Strangely, consideration of this amendment has seemed to focus on the suggestion that a 25-year-old who is transferred to an adult prison will be sexually abused. But what about the 20-, 22- or 24-year-old who abuses a 12-year-old in a juvenile detention centre? It seems that that scenario has escaped the attention of the Greens.

**The Hon. Dr Arthur Chesterfield-Evans**: The idea is that it does not happen; that they prevent it happening and they have a special program. It's horses for courses.

**Reverend the Hon. FRED NILE**: Is the Hon. Dr Arthur Chesterfield-Evans suggesting that sexual abuse occurs regularly in adult prisons but never occurs in a juvenile prison? I am merely saying that in a juvenile detention centre the sexual abuse of a 12-, 13- or 14-year-old by a 22- or 24-year-old may be so cleverly perpetrated that prison staff are not aware of it.

**Government amendments Nos 1 and 2 agreed to.**

**The TEMPORARY CHAIRMAN (The Hon. Dr Brian Pezzutti)**: Order! Government amendments Nos 1 and 2 having been agreed to, the Committee is not required to consider Greens amendments Nos 1 and 2.

**Question—That Greens amendment No. 3 be agreed to—put.**

**The Committee divided.**

**Ayes, 5**

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

**Noes, 27**

Ms Burnswoods	Mr Hatzistergos	Mrs Sham-Ho
Mr Colless	Mr M. I. Jones	Ms Tebbutt
Mr Corbett	Mr Kelly	Mr Tingle
Mr Costa	Mrs Nile	Mr Tsang
Mr Dyer	Reverend Nile	Mr West
Mr Egan	Mr Obeid	
Ms Fazio	Mr Oldfield	
Mrs Forsythe	Mr Pearce	<i>Tellers</i>
Miss Gardiner	Mr Ryan	Mr Jobling
Mr Harwin	Mr Samios	Mr Primrose

**Question resolved in the negative.**

**Greens amendment No. 3 negatived.**

**Schedule 1 as amended agreed to.**

**Title agreed to.**

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

**TRANSPORT ADMINISTRATION AMENDMENT (RAIL ACCESS) BILL**

**Second Reading**

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [6.33 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 purpose of this Bill is to amend the Transport Administration Act to permit Rail Infrastructure Corporation to lodge an access undertaking with the Australian Competition and Consumer Commission.

The access undertaking will provide for third party access to the New South Wales rail network.

In some respects, this is a fairly technical amendment. It is designed to adopt one of the approaches to third party access available under the Commonwealth Trade Practices Act.

It is, however, an important amendment because it will enable third party access to the New South Wales rail network to be placed on a more secure footing. This can only be good news for passenger and freight users of the rail network.

There are three mechanisms for addressing third party access under the Trade Practices Act.

The first mechanism is the one that the Government has adopted previously in relation to rail access. It involves New South Wales establishing its own access regime and then seeking the Commonwealth's certification of that regime as an effective access regime.

In 1996, the Government established the New South Wales Rail Access Regime under the Transport Administration Act. In 1997, the Government submitted the Regime to the National Competition Council.

Ultimately, the National Competition Council recommended that the relevant Commonwealth Minister certify the Regime as an effective access regime. This certification remained in place for some 13 months, expiring on 31 December 2000.

During the period of certification, access seekers could be confident that access to the New South Wales rail network would be provided on the terms of the Regime. In addition, during the period of certification, the infrastructure owner—which was then Rail Access Corporation—could be confident that the Regime could not be challenged by access seekers.

The second mechanism for addressing third party access under the Trade Practices Act is through the declaration process.

The Premier, as the designated Minister for New South Wales, could apply to the National Competition Council for a recommendation that the service provided by the New South Wales rail network be "declared".

If the National Competition Council was satisfied of certain matters, it could recommend declaration and the Premier would then be free to declare the service.

The main effect of declaring the service would be to require the infrastructure owner to negotiate with access seekers in relation to access. If they were unable to reach agreement, the access seeker could have the matter arbitrated by the ACCC.

Although the New South Wales Rail Access Regime adopts a "negotiate and arbitrate" model, it is a fundamentally different process to that of declaration. This is primarily because the declaration process is very uncertain.

In the case of a declaration, if a dispute is subject to arbitration, there is very little guidance as to what terms or standards the ACCC will apply. In contrast, under the Regime, if the Independent Pricing and Regulatory Tribunal were to arbitrate a dispute, it would apply the terms of the Regime.

The declaration process is not good for access seekers or for the infrastructure owner, because all parties need as much certainty as possible in relation to access to such important infrastructure.

The third mechanism for addressing third party access under the Trade Practices Act is the mechanism that this Bill adopts.

This involves an infrastructure owner or operator, as service provider, giving a written undertaking to the ACCC in respect of access to the service. Here, the infrastructure owner is Rail Infrastructure Corporation.

If the infrastructure owner submits an undertaking to the ACCC, the ACCC will assess it for compliance with competition policy principles. The ACCC will also engage in public consultation in relation to the undertaking.

If the ACCC is satisfied with the undertaking, or the undertaking is amended in accordance with the ACCC's requirements, the ACCC will accept the undertaking.

The undertaking will then provide certainty for access seekers and the infrastructure owner as to the terms on which access to the service will be provided.

Currently, the New South Wales Rail Access Regime sets out the terms on which Rail Infrastructure Corporation provides access to the New South Wales rail network.

The Regime does not have any status under the Trade Practices Act. It has not had any such status since the beginning of this year, when the Commonwealth's certification of the Regime expired.

This introduces an element of uncertainty for access seekers and for Rail Infrastructure Corporation.

The degree of uncertainty should not be overstated. In particular, the Regime is in the form previously approved by the Commonwealth. There is no reason to think that it has ceased to be an effective access regime at some point during this calendar year.

However, the Government would prefer to place rail access on a more secure footing, both for access seekers and for Rail Infrastructure Corporation.

The Bill will remove the provisions in the Transport Administration Act that provide for the Rail Infrastructure Corporation to establish a rail access regime.

The Bill will replace the Regime provisions with provisions that will enable Rail Infrastructure Corporation to give access undertakings to the ACCC.

The Bill will provide that Rail Infrastructure Corporation cannot give an undertaking or, once given, withdraw or vary an undertaking, except with the approval of the Minister for Transport. In addition, the Premier's concurrence will be required.

This mirrors the current requirements under the Transport Administration Act in relation to the Regime.

The Bill adopts most of the requirements that currently apply in relation to the Regime and applies them to an undertaking.

For example, the current requirements in relation to arbitration under the Independent Pricing and Regulatory Tribunal Act will continue to apply in respect of an undertaking.

Public consultation is not dealt with in the same way. This is because the public consultation requirements under the Trade Practices Act will apply. The ACCC will engage in a full public consultation process once Rail Infrastructure Corporation submits its undertaking.

The undertaking will not affect existing access agreements which have been entered into under the Regime. These will be preserved and will continue to apply until they expire. Of course, if the parties to any current access agreement agree to adopt any new arrangements permitted under an undertaking, the Bill will not prevent them from doing so.

The Bill also provides for an undertaking to apply under New South Wales law and without having any status under the Trade Practices Act. This is a fall back option only.

The reason the Government is introducing this Bill is because we want to establish greater certainty for access seekers and for Rail Infrastructure Corporation in relation to rail access. This certainty will be achieved if the ACCC accepts an undertaking submitted by Rail Infrastructure Corporation.

However, we have to be realistic. If agreement cannot be reached with the ACCC as to the terms of the undertaking, there must be an alternative mechanism which will provide at least as much certainty as the Regime currently provides.

If this fall back option were used, the undertaking would require the Minister's approval and the Premier's concurrence. It would also be subject to public consultation, unless the ACCC has already engaged in public consultation in respect of it. It would have the same status as the Regime currently has.

The Government does not intend to use the fall back option unless absolutely necessary.

Rail Infrastructure Corporation is developing an undertaking based on the principles under the current Rail Access Regime. I am confident that Rail Infrastructure Corporation will be able to reach agreement with the ACCC on the terms of an undertaking.

I commend the Bill to the House.

**The Hon. JOHN JOBLING** [6.33 p.m.]: The Opposition does not oppose the Transport Administration Amendment (Rail Access) Bill, the object of which is to enable the Rail Infrastructure Corporation [RIC] to submit an access undertaking to the Australian Competition and Consumer Commission [ACCC] in connection with the provision of access to the New South Wales rail network under section 44ZZAA of the Commonwealth Trade Practices Act 1974. This recent reorganisation will merge the Rail Access Corporation [RAC], Rail Services Australia [RSA] and Rail Infrastructure Corporation, which is a sensible outcome. It means that RAC plus RSA gives us RIC.

This bill is the result of recommendations of the McInerney inquiry into some serious rail happenings. Without this amendment we would not have the broad access that is necessary to facilitate third party access to the rail network in New South Wales. The requirements in the bill are specific. The Rail Infrastructure Corporation must comply with the obligations imposed on it by an access undertaking rather than the obligations previously imposed by the New South Wales rail access regime under the Transport Administration Act 1988. An access undertaking must not be prepared under the 1988 Act unless the Rail Infrastructure Corporation is unable to obtain acceptance by the ACCC for an access undertaking under the Commonwealth Trade Practices Act 1974.

There are three specific mechanisms for addressing third party access under the Trade Practices Act. First is the establishment of the rail access regime by New South Wales, which must be certified by the Commonwealth as an effective access regime; second is a declaration process, which involves an application by the Premier to the ACCC; and third is the option of a written undertaking to the ACCC. The third mechanism involves the infrastructure owner or operator providing a written undertaking to the ACCC in respect of access to the service, in this case the infrastructure owner being Rail Infrastructure Corporation. The ACCC will then consider and assess the undertaking for compliance with competition policy principles. The ACCC will then engage in public consultation and, if satisfied with the undertaking, will accept it.

Schedule 1 specifies that third party access to the New South Wales rail network is currently governed by a New South Wales access regime established under section 19B of the Act, which will be replaced by an access undertaking to be accepted by the ACCC under section 44ZZA of the Commonwealth Trade Practices Act, or if such an undertaking is not in force, an access undertaking approved by the Minister with the concurrence of the Premier under proposed schedule 6AA, set out in item [18] of schedule 1 to the bill.

The undertakings thus given will provide certainty for access seekers and the infrastructure owner in relation to the terms on which the access to the service will be provided. The only concern that the Opposition would express, very briefly, relates to the scope of public consultation that has occurred and how third parties were consulted on this matter. Obviously, third party access must be clear, and must be dealt with correctly. This bill provides the mechanisms necessary to deal with those issues, and therefore the Opposition will support the bill. I indicate now that the Opposition will support a number of the amendments that have been foreshadowed. I commend the bill to the House.

**Ms LEE RHIANNON** [6.40 p.m.]: This bill establishes a new instrument for regulating and pricing access to public rail track in New South Wales. It removes references to the old rail access regime and replaces it with a rail access undertaking that is to be submitted for approval to the Australian Consumer and Competition Commission [ACCC] and that also can be given an authorisation by the Minister with the concurrence of the Premier. While the bill appears to be minor in nature, it is the latest stage in a process that is comprehensively pulling at the railway system in New South Wales and across Australia and compromising its future. The Greens oppose that process. We oppose the fundamental premise on which it is founded, and we oppose the devastating impact it will have on the people and environment of New South Wales, particularly on rural and remote communities.

In 1996, with an eye on the Thatcherite privatisation of the United Kingdom rail network, New South Wales disaggregated the ownership of the public rail network. Based on a blind faith in the superiority of competition and private ownership, and a retreat from the obligation of government to find the resources to develop infrastructure, the Government broke the rail into several components—the Rail Access Corporation, Rail Services Australia, City Rail, CountryLink and FreightCorp. Rail Access and Rail Services subsequently were merged into the Rail Infrastructure Corporation. As was predicted at the time of disaggregation by the Greens and others who care about the future of the rail transport system in New South Wales, FreightCorp is now being privatised.

The most remarkable feature of this restructuring is that although it appears to mimic the United Kingdom experience, it has learnt little from the failure of the British model. In the United Kingdom the rail is owned and maintained by Railtrack, which was floated on the stock exchange on 20 May 1996. Five and a half years and one spectacular derailment later, on 5 October 2001, Railtrack was declared bankrupt. The Thatcherite restructuring has left the British rail network in an almost irreversible state of decline, with lower standards of service and safety, and passengers and freight shippers turning away in droves.

The United Kingdom train system became notorious for its delays and speed restrictions, which sharply undermined rail economics and broader social and environmental goals. Stephen Grant, writing in the November 2001 issue of *Modern Rail*, made clear the causes of the problems. He described Railtrack as being enmeshed in:

... a Byzantine structure of contracts with operators and suppliers whilst giving it no direct relationship with the passengers and freight shippers for whom the railway exists. The architects of privatisation had built in the tensions that were ultimately to pull the company apart.

The United Kingdom experience teaches us a simple, but crucial, lesson: separation of ownership of rail track from the rail operator simply does not work. It will be to the detriment of the people of New South Wales if this proposal goes ahead. It might make sense in the minds of the neoclassical economic ideologues who have captured the public debate. It might be attractive to the Treasury toilers who see only an opportunity to further their self-appointed life missions of privatisation and tax cutting. It might appeal to shortsighted politicians who are seduced by the windfall gains of privatisation and its election-buying power.

The British Rail privatisation was, we understand, the inspiration for the Hilmer competition review's abstract case about competition in the rail services. But the competition models of rail disaggregation are now a proven failure. They failed to deliver a reliable service. They failed to maintain a responsive track maintenance system. They failed to deliver high-quality safety. They failed to attract appropriate levels of investment into the track system. And, crucially, they subsume the all-important public interest considerations into an oversimplified set of commercial imperatives.

It is time the New South Wales Government put aside its ideological and irrational attachment to this model and approached the future of the rail industry with an open mind. That really is not much to ask. It is time that the issues of public interest, especially in terms of the environmental, social and employment benefits of rail, were rescued from being just an afterthought. It is time that the New South Wales Government abandoned its blind commitment to competition ideology and started thinking about the future. The so-called efficiencies of privatisation may bring short-term gains, but we must ensure that moves towards efficiency are linked with delivery of services to all of the people of New South Wales, particularly those in rural and regional areas of the State, as well as serving our environment.

It is not just the Greens who are raising the alarm bells on competition policy. Federal Labor's current policy on National Competition Policy is for a stringent public interest test to be applied to every application of National Competition Policy. It is a tragedy for Parliaments throughout Australia that Labor policy does not really bind Labor governments upon their election to power. Creation of an access undertaking for the New South Wales rail network is a major application of National Competition Policy.

Under the Competition Principles Agreement, signed by the Carr Government in 1995, the public interest test may take account of the following, most worthwhile issues. Again, it is unfortunate that the Carr Government bypasses these considerations. Those issues include ecologically sustainable development; social welfare and equity considerations, including community service obligations; legislation and regulation on occupational health and safety, industrial relations, and access and equity; economic and regional development; interests of consumers; business competitiveness; and efficient resource allocation. Those are all considerations that must be taken into account when issues such as those raised by the bill under debate come before this House.

The public interest test was inserted in the Competition Principles Agreement at the closing stages of negotiation, under intense pressure from the Australian Council of Trade Unions, the Australian Conservation Foundation, the Australian Council of Social Service and the Australian Consumers Association—all worthwhile organisations that, between them, cover hundreds of thousands of Australians, and are therefore speaking with a common voice and putting forward alternatives that could take Australia forward in a most sensible way, if governments would only listen.

It is clear now that the public interest test did not enjoy the genuine commitment of the Council of Australian Governments, the National Competition Council or the ACCC, bodies that were later established. There has been a singular failure of the National Competition Council and of the Commonwealth, State and Territory governments to apply anything like this public interest test in a transparent way. The National Competition Council itself has suggested that the primary public interest test is economic efficiency, and that social and environmental concerns are secondary. The competition principles agreement specifically states that public or private ownership is not an interest in National Competition Policy. However, National Competition Policy has been used often to justify the privatisation, outsourcing and competitive tendering of public services. This public interest test was not applied in New South Wales in 1996 when the current rail access regime was established. It is unfortunate that the New South Wales Government, early in its first year in office in 1995, could not see its way free to carry out that test.

The creation of the RAC and its access regime in New South Wales has seen a shocking deterioration in workplace and public health and safety and in the quality of rail infrastructure; and it has seen the steady march to our current point where FreightCorp is about to be privatised, and where our rural rail network is in jeopardy from economic efficiency—the favourite values about which we hear so much from Treasury. In other words, the public interest has been greatly diminished already by the application of National Competition Policy to the rail system in this State. These points were made by special commissioner McInerney in his reports on the Glenbrook fatal rail accident, but have been studiously ignored by the Carr Government. I want to emphasise that it is not only the Greens position: many people from the community with a diverse range of responsibilities are concerned about the shift away from the public interest.

The Greens argue that there should be a full public inquiry into the future of the New South Wales rail system before any decision is made about extending the current access regime. At the inquiry the Greens will argue that the better option is for a renewed commitment to public ownership of infrastructure and operations, with provision for commercial arrangements for other train operators within that framework. We do not rule out all commercial operations, but there should certainly be a shift back to the primacy of the public interest. We believe that this should be the position of all the parties in this Parliament. If all the statements by the National Party and Country Labor about their concern for rural and regional New South Wales are to have any ring of truth, that really needs to be put in place.

This bill is a further step in the direction of ignoring public interest, of handing over the rail industry to market forces and privatisation. It is a further step towards replicating the failures of the United Kingdom rail industry. It is a step away from world's best practice in the rail industry. This may sound dramatic, but let us stop before we drive New South Wales railways over the cliff. That will be the final chapter in the history of New South Wales railways if the major parties continue to take us down this path.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [6.53 p.m.]: The Transport Administration Amendment (Rail Access) Bill amends the Transport Administration Act to enable third party access to rail infrastructure owned by the New South Wales Rail Infrastructure Corporation [RIC]. The RIC will lodge access undertakings with the Australian Competition and Consumer Commission [ACCC] under the Trade Practices Act. The Independent Pricing and Regulatory Tribunal [IPART] will continue to regulate and arbitrate pricing regimes. With the privatisation of FreightCorp, the Government decided to retain the RIC, which owns the track and other rail facilities. I congratulate the Treasurer on that decision as it is critical to retaining control of our rail services, and it offers the possibility of later re-entering the market and re-establishing a publicly owned entity if supernormal profits are taken by private sector operators.

We believe that rail, like roads, should be public and should be developed on the same criteria as roads. Rail should not have the artificial criteria whereby it has to pay for itself and roads are assumed to be a cost. That seems to be the situation in relation to long-distance freight in Australia as a whole. This is part of National Competition Policy reform agenda. The Australian Democrats are not against National Competition Policy but we believe that some of these aspects have to be looked at and that competition cannot simply be regarded as the panacea for all things. I am worried that privately-owned rolling stock using government-owned track is an

economic model rather than an ideal train model—perhaps because the rail system in Australia has been neglected and not optimally managed. There may be restrictive work practices or definitions that have inhibited the growth of rail and its competition with the road lobby.

There are possibilities to develop infrastructure to allow rail to take over from road to move freight more quickly and cheaply between Sydney and Melbourne. They include higher tunnels to allow containers to be stacked; trucks being carried on trains and thus using far less fuel; allowing goods yards to handle containers and freight with a view to overcoming the problem of double handling when delivery points are not adjacent to rail; and determining who should pay for, for example, improved signalling—the owner, who would recoup that cost, or the user upfront.

In the past it was assumed that trains could only observe signals rather than interact with them. Planes have developed interactive signalling systems and it is possible that future signalling systems will become more sophisticated. The lack of good signalling systems was significant in the Glenbrook disaster. The question is: Who will pay for improvements to infrastructure or signalling systems? How will a private operator of a trains system improve their return by providing certain facilities? Will they have to pay for them or will the RIC build them? If so, under what arrangement?

Will it be a bureaucratic nightmare for a sensible private sector operator to try to get a facility that would enable more freight to be moved on rail? Will the operator run up against government bureaucracy that is not able to build things quickly and efficiently? Will the bureaucracy demand a certain amount of money for an area of land or a road, as well? I am reminded that after the Glenbrook disaster, the crossbenchers asked for an inquiry into the rail system and the Minister assembled a galaxy of managers of different divisions of the rail system. Whenever they were asked a simple question there was great difficulty getting a manager to answer. It would have done proud as a script for either Monty Python or. Whenever they were asked about the new efficient systems they were not sure which manager should answer the simple question.

I cannot remember all of the different divisions of the rail system but it would have been highly comical at the time, if it were not so tragic. Fortunately, Mr Christie rationalised the number of divisions and put together quite a good rail system for the Olympics, which was its great triumph. It is a question of whether the new RIC can respond in a flexible manner. It is one thing to run an existing system but it is another to adapt to changes in culture that will increase the use of rail in our State. I can only hope that a degree of flexibility in this relationship will develop. The Australian Democrats are concerned that there will be disclosure of contracts, particularly if large amounts of public funds are committed to infrastructure development. To what extent will the benefits be shared by the public if a lot of public money is invested? I accept the need for this bill, but I think the State's interests in its dealings with private sector operators must be watched closely and as publicly as possible within the commercial framework. Commercial-in-confidence considerations must not be allowed to shut down discussions. Perhaps the Auditor-General's influence in this area might be important in the medium term.

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [7.00 p.m.], in reply: I thank the Hon. John Jobling, Ms Lee Rhiannon and the Hon. Dr Arthur Chesterfield-Evans for their contributions to the debate and I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (SKI RESORT AREAS) BILL**

#### **Second Reading**

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries), on behalf of the Hon. John Della Bosca [7.01 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.**



I am pleased to introduce this Bill as it provides the legislative framework to manage the planning of ski resorts within the Kosciuszko National Park.

Members of the House will remember that in February of this year the Government announced an overhaul of planning for ski resort areas within the Kosciuszko National Park.

At that time my colleague the Minister for the Environment, Bob Debus, released the independent review by Bret Walker SC, commissioned by the NSW Government, following recommendations from the Coroner's report into the 1997 Thredbo landslide.

The Walker Report made a number of recommendations, all of which were accepted by the NSW Government.

In particular, the Government adopted the following recommendations:

1. To continue the management of the ski resorts by the National Parks and Wildlife Service.
2. Planning for the ski resorts should be governed by Part 3 (Plan Making) and Part 4 (Development Assessment) of the *Environmental Planning and Assessment Act 1979*;
3. Approved the development, by the Department of Planning in conjunction with National Parks and Wildlife Service, of a Regional Environmental Plan to apply to the ski resorts areas;
4. As an interim measure, approved the preparation, by the Department of Planning in conjunction with National Parks and Wildlife Service, of a State Environmental Planning Policy to apply to the ski resort areas.

This Bill ensures the planning framework is in place to commence implementation of the Government decisions.

Under this new planning regime, the two key instruments will be the Kosciuszko Ski Resorts Regional Environmental Plan and a revised Kosciuszko National Park Plan of Management.

The Department of Planning and the National Parks and Wildlife Service will develop these instruments in close co-operation with each other and the community.

The Plans will take about two years to complete because of the need to fully investigate the many sensitive issues involved as well as consult properly with all the interested parties.

As I mentioned previously the Government earlier this year approved the preparation by the Department of Planning, in conjunction with the National Parks and Wildlife Service, of an interim State Environmental Planning Policy to apply to the ski resort areas within the Kosciuszko National Park.

The State Environmental Planning Policy will be repealed when the proposed Regional Environmental Plan is gazetted.

The package of reforms contained in the Bill, its accompanying Regulations and the State Environmental Planning Policy will mean the professional planning staff within the Department of Planning will be responsible for making recommendations to the Minister for Planning concerning development proposed within the ski resorts.

The reforms will free up the National Parks and Wildlife Service to do what it does spectacularly well—managing and conserving the significant natural and cultural environments of one of Australia's most significant National Parks.

Introduction of these measures will mean planning and development decisions relating to ski resorts within the Kosciuszko National Park will be governed by the provisions of Part 4 of the *Environmental Planning and Assessment Act* and accompanying Regulations, in the same way they are elsewhere in NSW.

To quote from Bret Walker in his Inquiry Report:

"The State and regional significance of these places [that is, the ski resorts], the general expectation of people throughout New South Wales of a planning regime, the off-the-shelf resource represented by the *Environmental Planning and Assessment Act* and the Land and Environment Court, and the need to prevent deleterious conflicts between conservation and development values and interests, all point to the need for change" (para 94 of the Walker report).

Turning now to the actual Bill.

The Bill has two objectives.

Firstly, the Bill amends the *Environmental Planning and Assessment Act 1979* so the ski resort areas in the Kosciuszko National Park can be subject to the requirements of Part 4 of the Act;

Secondly, the Bill amends Section 163B of the *National Parks and Wildlife Act 1974* to enable the Minister for Planning as the consent authority to issue Orders under Part 6 of the *Environmental Planning and Assessment Act 1979* and to carry out regulatory functions contained in Chapter 7 of the *Local Government Act 1993*.

Schedule 1 of the Bill amends the *Environmental Planning and Assessment Act*.

A little background information on the current planning situation in Kosciuszko National Park is necessary to understand this part of the Bill.

Presently activities within the ski resort areas do not require development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*.

The environmental impact of activities is assessed under Part 5 of that Act.

The Government took the decision, on the basis of the Walker Report recommendation, that activities in the ski resort areas will require development consent, in much the same way as other areas of the State.

Clause 32B of the Bill identifies the types of Regulations that need to be made to change the development approval system in the ski resort areas from Part 5 to Part 4.

The Regulations will enable the conversion of existing Part 5 approvals in the ski resort areas to development consents under Part 4.

This will enable any future proposals that relate to a development previously approved under Part 5 to be assessed under Part 4.

The Regulations will also include the conversion of other approvals such as building approvals and occupancy certificates to become relevant Part 4A Certificates under the *Environmental Planning and Assessment Act 1979*.

The Regulations will also modify the operation of the *Environmental Planning and Assessment Act 1979* in limited ways to specify who is to carry out functions under the Act in relation to the ski resort areas and the way in which those functions are to be carried out.

In particular, this will enable provisions to be made to recognise the role in those areas of lessees as the appropriate persons upon whom Orders are issued under Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979* rather than the National Parks and Wildlife Service as "landowner".

The Bill also authorises the Director-General of the Department of Planning to certify that any existing Part 5 approval, certificate, permission or other authority can be treated as a valid development consent or Part 4A certificate.

Schedule 2 of the Bill amends Section 163B of the *National Parks and Wildlife Act 1974*.

Section 163B of that Act precludes the carrying out of certain regulatory functions by the local Council under Chapter 7 of the *Local Government Act 1993* and the issuing of Orders under Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979* in relation to development within National Parks.

Division 2A Part 6 Orders provide either for a Council or a consent authority to issue various orders against owners such as orders to demolish or remove buildings, or to repair or make structural alterations.

The non-application of these Parts of the *Environmental Planning and Assessment Act 1979* to land in a National Park was appropriate because development proposals were assessed and approved in accordance with the *National Parks and Wildlife Act 1974* and Part 5 of the *Environmental Planning and Assessment Act 1979*.

The amendment to Section 163B of the *National Parks and Wildlife Act 1974* will only apply to the ski resort areas and will only allow the consent authority, being the Minister for Planning, to exercise those powers and functions.

As I indicated earlier, this Bill will be accompanied by a State Environmental Planning Policy to apply to the Ski Resorts within the Kosciuszko National Park.

The SEPP is intended to be an interim measure only. It will be replaced by a more comprehensive Regional Environmental Plan made after the carrying out of an Environmental Study and appropriate consultation with key stakeholders and the wider community under the *Environmental Planning and Assessment Act 1979*.

The SEPP brings the planning and development of ski resorts in the Kosciuszko National Park under Part 4 of the *Environmental Planning and Assessment Act 1979*.

It also ensures the only development permissible is development authorised by the *National Parks and Wildlife Act 1974*, as is the case now.

However, development being carried out by or on behalf of the Snowy Hydro will continue to be assessed under Part 5 of the *Environmental Planning and Assessment Act 1979*.

Development proposed to be carried out by or on behalf of a public authority will also continue to be assessed under Part 5 of this Act, other than development for water storage dams, sewage treatment works and waste management facilities.

Officers of the Department of Planning, in conjunction with officers from the National Parks and Wildlife Service, have developed the SEPP.

In conclusion, the Government has put forward this Bill in response to the recommendations coming from the report by Bret Walker, SC, commissioned by the Government following recommendations by the Coroner's report into the 1997 Thredbo landslide.

This Bill sets the legislative framework to allow the transfer of the consent authority role from the National Parks and Wildlife Service to the Minister for Planning.

It will mean a clearer delineation of roles for both agencies and it will ensure the right people are responsible for the right areas.

The Bill will ensure there will be a seamless transfer of responsibility from the National Parks and Wildlife Service to the Department of Planning so that planning and development decisions relating to the ski industry are made in the same way they are made elsewhere in NSW.

Whilst the Government recognises the State and regional importance of the ski resort industry to the State's economy, we also very firmly acknowledge the highly sensitive and fragile alpine environment within which the resorts are located.

The Department of Planning will work closely with the National Parks and Wildlife Service to uphold the Government's longstanding commitment to protection of the natural environment and to ensure development is carried out in an ecologically sustainable manner.

I commend the Bill to the House.

**The Hon. DON HARWIN** [7.01 p.m.]: The purpose of the Environmental Planning and Assessment Amendment (Ski Resort Areas) Bill is to implement one of the major recommendations in the report of Mr Bret Walker, SC, who was commissioned in the wake of the Coroner's investigation into the tragic events that occurred in Thredbo in 1997. Mr Walker's report recommended that planning powers for projects in the Kosciuszko National Park with a value of more than \$2 million be handed from the National Parks and Wildlife Service to the Minister for Planning. The bill facilitates this process by bringing certain developments in the national park within the operation of part 4 of the Environmental Planning and Assessment Act. Ultimately, development consents in the Kosciuszko National Park will be governed by a regional environmental plan, which, we are told, will take approximately two years to formulate. In the interim a State environmental planning policy will govern developments in the national park.

Whilst some concerns have been expressed in the public arena that this move may result in increased development in the national park, it seems only logical that development consent procedures be handed to an instrumentality whose core business is precisely that. Without wishing to detract in any way from the excellent work done by the National Parks and Wildlife Service, its primary role could never have been envisaged to include the approval of large-scale developments. In recommending the transfer of these functions to the Minister for Planning, Mr Walker has sought to standardise procedures for ski resort developments with procedures for other developments in New South Wales. Once fully implemented, the regional environmental plan will allow for full public scrutiny of planned developments in the Kosciuszko National Park, and for review in the Land and Environment Court where required.

As flagged by my colleague the honourable member for Pittwater in another place, the Opposition has some concerns about this bill. We await the drafting of the State environmental planning policy and the subsequent regional environmental plan for a comprehensive definition of exactly what constitutes a "ski resort". We are also concerned about a lack of transparency that may lead to deals between lessors, landowners and Planning New South Wales in future developments. Bret Walker said:

... ski resorts have been in Kosciuszko National Park longer than the present National Parks and Wildlife Service and are a feature of this State's economic and social life. People live, work and play in them. It is about time that planning for them came in the mainstream of open, regulated and reviewable procedures."

I hope the Government will heed that advice. The Opposition does not oppose the bill.

**The Hon. RICHARD JONES** [7.04 p.m.]: The Environmental Planning and Assessment Amendment (Ski Resort Areas) Bill transfers the consent authority role for ski resort areas in the Kosciuszko National Park from the National Parks and Wildlife Service to the Minister for Planning. It does so by amending the National Parks and Wildlife Act to enable the Minister for Planning to be the consent authority for ski resort areas under part 5 of the Environmental Planning and Assessment Act 1979, and by amending the Act to enable those areas to be made subject to the requirements of part 4 of that Act. While this bill implements one of the recommendations of the review by Bret Walker, SC, who was commissioned by the Government in response to the Coroner's report into the 1997 Thredbo landslide, it is of great concern to environment groups and to me. As the Minister emphasised when announcing Mr Walker's review, the first recommendation was:

... to retain the ski resorts within Kosciuszko National Park under the management of the National Parks and Wildlife Service.

However, this bill does not expressly recognise that the Minister for the Environment remains the owner of the land in ski resort areas and that the land continues to be a national park, subject to the provisions of the National Parks and Wildlife Act. There is also nothing in the bill to stop a future government making local councils the consent authorities for developments in ski resort areas within Kosciuszko National Park, and it has not been made clear whether the ski resort areas identified by the Minister for Planning could intrude into areas of the national park not recognised as ski resort areas under the park plan of management.

The bringing of ski resort developments under part 4 of the Environmental Planning and Assessment Act—they presently come under part 5—is also problematic in that it could reduce the standard of environmental impact assessment required to be met by proposed developments. A ski resort development that is likely to affect the environment significantly is currently subject to a full environmental impact statement. Under part 4, the same development may not require an environmental impact study. While it is possible that the proposed State environmental planning policy [SEPP], and later the regional environment plan [REP], will address this issue, they may not do so. In any event, neither an SEPP nor an REP is a secure regulatory instrument, as a Minister in a future government could change the provisions of these instruments.

The assurance by Mr Walker, SC, that putting future planning and development under parts 4 and 5 of the Environmental Planning and Assessment Act will make the process subject to thorough accountability through the merits appeal and judicial review jurisdiction of the Land and Environment Court, also offers little comfort. This court is often found to be an ineffective arbiter between commercial interests and those who oppose them on environmental grounds. Too often, determined developers with the resources to exhaust those who oppose them in proceedings in that court will win, often seemingly regardless of the merits of the case.

Similarly, the record of Planning New South Wales in overseeing developments in sensitive areas hardly inspires confidence. After all, this is the department that promoted housing development at North Head and championed the bulldozing of Western Sydney's most important bushland. It is also the department that oversaw the commission of inquiry two years ago that infamously distinguished itself by recommending that the Kosciuszko National Park's plan of management be modified to facilitate future resort developments and that overall regional planning should be done by a Planning New South Wales committee, which should include the major resort operators.

Therefore, something must be done to amend and improve this bill substantially. Otherwise it will not be long before we see applications for airports, helipads, casinos, massively expanded hotels and privately owned accommodation, as happened on Victoria's ski fields. It is well known that a ski fields company dominated by Australia's richest man, Mr Kerry Packer, wants to take control of the planning for controversial resort expansion inside Kosciuszko National Park. His company, Perisher Blue, wants approval for a series of four-storey apartment blocks in Perisher, with 45-year leases, enabling privatisation of the public national park. It is also well known that this Government is looking more than favourably on such proposals.

In December last year the Government decided to negotiate directly with the Packer-owned Perisher Blue company on the construction of its huge resort in Perisher, and in a media release dated 12 September 2000 the Minister for Public Works and Services, Morris Iemma, sang the praises of the proposed upgrades to water, sewerage and power facilities that will be associated with these developments. However, these proposals will mean more wilderness-fighting dams, forest-slashing power lines and choking sewerage pollution. Such damaging works are hardly going to improve the aesthetics of the national park.

The company's proposed 800-bed Perisher resort will also be available for private sale. While selling off the resort as private apartments is the quickest way to turn a dollar, it also means that the people of New South Wales can forget about the development being for the enjoyment of the general public. It will be a luxury investment for the rich and nothing else. Packer's giant private resort development could also defeat the ski tube transport strategy and lead to widening the Kosciuszko Highway for those big spenders who will insist on car access to the resorts. This planning reversal will have a disastrous impact on the integrity of the national park.

Kosciuszko National Park not only contains Australia's highest peaks; it also contains unique and sensitive alpine environments that make it one of Australia's most important national parks. Kosciuszko National Park is already in dire need of better protection. The park has faced and continues to face expansion proposals from more than one developer. In 1981, for example, there was a proposal to provide accommodation for at least 50,000 people. As a result of such proposals, the resorts are slowly turning into towns, despite being in such an important and fragile national park. Putting aside the environmental issues associated with the influx of hundreds or thousands of people in a sub-alpine environment deep within a national park, providing permanent accommodation in a cold climate creates significant problems.

There have been problems with the operation of sewage treatment plants in high altitudes. Charlottes Pass was closed last winter due to a malfunctioning sewerage system and the sewerage plant at Perisher regularly exceeds Environment Protection Authority water quality standards. Last year a holding dam failed at Perisher and the National Parks and Wildlife Service is in court facing hefty fines. Instead of providing for the expansion of resort areas, the Government should be supporting local communities surrounding the national

park by providing for accommodation in existing towns. It is better to put accommodation and related infrastructure in the Snowy Mountains and Cooma and Monaro shires and to set limits such as those that are in place at Jindabyne, Adaminaby, Cooma and Berridale.

Greater emphasis should be placed on reducing the environmental impacts from the resorts and increasing reliance on the ski tube. Unfortunately, this bill will open the ski resort areas to yet more development. It will take control out of the hands of the National Parks and Wildlife Service, enabling national park development such as that in Perisher to be sold off. As such, this bill is set to seriously damage this Government's green credentials—one of its strongest points—as once big business has an interest in a national park, conservation gets pushed to the bottom of the list. This bill is set to seriously damage the Government's electoral chances in 2003.

I am sure that honourable members are aware, because votergrams have been flooding in on this issue, that people in New South Wales are getting tired of the Government giving away massive revenue and property advantages to individual commercial enterprises. The authors of votergrams have objected vigorously to any proposal to remove the National Parks and Wildlife Service from the management of the mountain. They have also urged that Perisher remain with the National Parks and Wildlife Service for the benefit of future users of the park. The votergrams also advised honourable members that the Government must have its finger on the pulse at all times. Votergrams advised honourable members that selling off Perisher is not in the interests of the area or the thousands of voters who stay at ski lodges.

As one votergram that I received succinctly put it: Perhaps this is yet another reason why community groups will urge one another to put Labor last at the 2003 election. I urge the Government to heed these representations and to listen to and act upon the advice proffered by them. This Government would do well to stand by the 1980 recommendation of the National Parks and Wildlife Service that there be a limit to resort development; the 1999 inquiry of the National Parks and Wildlife Service proposing to limit development to 1,000 beds; and the mid-1980 promise by the Wran Labor Government that there would be no further expansion of ski resorts in Kosciuszko National Park, with all new accommodation to be established in regional towns such as Jindabyne.

The Government would also do well to keep in mind that more and more people are turning to national parks like Kosciuszko, as they come to a greater understanding of the fragility of our natural world and as they recoil from the overwhelming onslaught of commercial society. The fundamental characteristics of national parks are that they are permanent, protected and public. They are important environmental and cultural sanctuaries, not economic tools for development. I join the authors of the votergrams and environment groups in their call for this Government to retain National Parks and Wildlife Service control over Kosciuszko.

There is no doubt that the National Parks and Wildlife Service needs to constantly ensure that the best advice is sought and best practice is implemented. That can be achieved while the Minister for the Environment and the National Parks and Wildlife Service retain full control. Therefore, I will be moving amendments in Committee that will limit the application of this bill to current ski resort buildings and ensure that local councils cannot be the consent authority for developments within ski resort areas. My amendments will require the Minister for the Environment to be consulted on any regulations, State environmental planning policies and any other environmental planning instruments made for ski resort areas.

My amendments will also ensure that the Minister for the Environment is satisfied that any policy, regulation or instrument promotes the objects of the National Parks and Wildlife Act and is consistent with the plan of management for the national park. The Minister must publish reasons for making regulations, policies or instruments that go against the advice of the Minister for the Environment. The amendments will also ensure that developments that may have significant environmental impacts are subject to approval by the Minister for the Environment; clarify that regulations cannot cause any provision to prevail over the National Parks and Wildlife Act; and clarify that the Department of Urban Affairs and Planning, or Planning New South Wales, cannot make orders that would prevent or hinder the director-general from carrying out any power, function or responsibility under the National Parks and Wildlife Act. I urge honourable members to support the amendments that I will be moving in Committee.

**The Hon. IAN COHEN** [7.15 p.m.]: The Greens strongly oppose the Environmental Planning and Assessment Amendment (Ski Resort Areas) Bill. The area covered by this bill is a special part of New South Wales. The bill focuses on ski resorts within Kosciuszko National Park, but it potentially covers the entire area of Kosciuszko National Park. The park is special for a number of reasons. From an environmental

perspective, the park contains some of the most superb wilderness in Australia and it is arguably one of the finest alpine wilderness areas in the world. The park is also a much-loved recreational area for many people and it supports the ski industry, which is an important economic and social influence in this part of the State.

The Snowy Mountains scheme also has had a profound effect on the park. Earlier this year the Government announced that it accepted the recommendations of the Walker report. The Walker inquiry was set up in response to the tragic Thredbo landslide. The purpose of the inquiry was to identify who was responsible for the landslide. The inquiry found that the dangerous condition of the road known as the Alpine Way caused the landslide. Responsibility was placed primarily on the National Parks and Wildlife Service. We must remember that the inquiry had narrow terms of reference. It was not set up to examine the management arrangements for national parks generally, or to examine the environmental impacts of the ski resorts.

Despite the narrow perspective of the inquiry, the report made some significant recommendations about park management. The report recommended that the Roads and Traffic Authority [RTA] be given responsibility for major roads. It also recommended that the Department of Urban Affairs and Planning [DUAP], or Planning New South Wales, be given responsibility for major new resort development. The essence of the recommendations was that the National Parks and Wildlife Service should lose planning responsibility for major new ski resort development and infrastructure.

When Minister Debus announced that the Government had accepted the recommendations, he said that it was proper that the National Parks and Wildlife Service look after environmental management, the RTA look after roads and DUAP look after major development. That extraordinary statement contradicted the principles of integrated management, which government policy has advocated for at least the last 10 years. Hundreds of government reports have recognised the importance of integrated decision making. This policy requires that the environment not be compartmentalised as a separate issue. Rather it acknowledges that environmental management is affected by and must be linked to economic management.

By adopting the Walker recommendations, this bill is based on a fundamentally flawed approach to the management of Kosciuszko National Park. The bill is based on the assumption that major development within the park is no different from major development elsewhere. This bill means that the planning and development control process for ski resort development will be much the same as the development assessment process which applies in suburban Sydney.

**The Hon. Duncan Gay:** This has nothing to do with the Packer leases.

**The Hon. IAN COHEN:** The Deputy Leader of the Opposition will have an opportunity to speak later in debate on this issue. I quote from a letter written by Andrew Cox from the Environmental Liaison Office, which is addressed to members on the crossbenches and relevant Ministers, and states:

The Bill fails to achieve a balance between ski resort development and protection of the outstanding natural values of our alpine heritage

The Bill is too broad in its application, potentially removing the role of the NPWS in development consent within Kosciuszko National Park and opening up the way to expand ski resort areas into undeveloped areas of the national park.

There is nothing to prevent the government, or a future government, from making local Councils the consent authorities for developments in ski resort areas. The Bill needs to be amended to identify DUAP as the consent authority for Ski Resort Areas and prevent the shifting of powers from DUAP to any other entity without further amendment of the Act.

Only those ski resort management units in the Kosciuszko National Park Plan of Management that contain the leases described in Schedule 15 of this Act can be contained in a ski resort area, and these ski resort areas must only contain accommodation and ancillary facilities directly associated with accommodation, but not the associated ski runs and access routes. Ski resort areas should not be expanded without an Act of Parliament.

The Minister administering the *National Parks and Wildlife Act 1974* should have concurrence powers regarding any regulations or environmental planning instruments or consents under this Act or the *Environmental Planning and Assessment Act*. The Minister for Planning must take into account the comments of the National Parks and Wildlife, the National Parks and Wildlife Advisory Council and the public in considering approval of any development consent under the new provisions.

It is unclear whether the National Parks and Wildlife Act and the Plan of Management for Kosciuszko National Park takes precedence to any environmental planning instrument under the planning legislation. To remove any doubt, the primacy of the NP&W Act and a plan of management of the Act should be specified.

This will ensure that the existing plan of management remains in force over any ski resort area until a new plan of management is made.

The bringing of ski resort developments under Part 4 of the EP&A Act (they are presently under Part 5) reduces the standard of environmental impact assessment required to be met by proposed developments. A ski resort development that is likely to significantly affect the environment is currently required to be preceded by a full environmental impact statement (under Part 5 of the EP&A Act). However, the same development under Part 4 may not require an EIS. It is possible that the proposed SEPP and later the REP will address this issue, but it is just as possible that they will not. In any event, neither a SEPP nor a REP is a secure regulatory instrument as a future government can amend either by administrative action. The Bill needs to be amended to require that within Ski Resort Areas the Part 5 test of "likely to significantly affect the environment" will continue to be applied by deeming such development a 'designated development'. In determining whether a proposed development is "likely to significantly affect the environment" the DG of Urban Affairs and Planning or of the NPWS should be expressly required to consult with each other, and to "take into account" the advice.

The Director General (DG) of the National Parks and Wildlife Service remains the owner of the land in Ski Resort Areas and the land continues to be a national park. An amendment to the Bill is necessary to expressly recognise this, and note that the consent in writing of the DG of National Parks and Wildlife (as landowner and as management authority for the national park), will be required to accompany development applications notwithstanding any other provision of the Bill.

The NPWS currently has an 'owner's consent' role where it must give permission for any proposed development by a leaseholder in a national park before it is submitted to the determining authority. The Bill will allow the NPWS's 'owners consent' powers to be removed by a Regional Environmental Plan or State Environmental Planning Policy.

Concurrence of the DG of the National Parks and Wildlife Service should be required regarding any development within the Ski Resort Area.

Schedule 2 of the Bill should be amended so that any power of DUAP to give an order to the DG of National Parks and Wildlife within a Ski Resort Area will be restricted in its operation and effect so as not to conflict with the DG's powers, functions and responsibilities under the NP&W Act.

The Bill should be amended to specify that the National Parks and Wildlife Service is to agree on the nature of the public exhibition, comment and review of any development regulations or environmental planning instruments or consents under this Act or the *Environmental Planning and Assessment Act*.

A national park is not the same as an urbanised area. The expansion of ski resorts inevitably detracts from biodiversity and the other environmental values for which the park was established. Within my lifetime, the Perisher Blue and Thredbo resorts have been transformed from pristine wilderness to noisy, polluted, expensive real estate. New roads, car parks, apartments and sewage works will inevitably result in the park being further compromised and regarded as little more than a scenic backdrop to the ski resorts. Ski resorts have a huge impact on the fragile alpine environment. Concerns about environmental impact led to the closure of one resort at the height of this year's ski season. Charlotte Pass was closed due to chemical contamination of the sewerage system. Thankfully the risk of effluent polluting the mountain streams was averted on this occasion. However, there have been other instances when sewage contamination has entered creeks and rivers.

**The Hon. Doug Moppett:** A great sport, skiing.

**The Hon. IAN COHEN:** And I love it too. I love cross-country skiing, but let us do it properly. No-one is knocking the wonders of the wilderness area and the beauty of skiing. That is why we are very concerned.

**The Hon. Doug Moppett:** A wonderful recreation.

**The Hon. IAN COHEN:** It is a wonderful recreation. Certainly it is a wonderful thing for the young and old to get out in the snowfields. However, there is equal reason for concern when those beautiful areas are degraded by such massive development potential, which is occurring at present. An article by Mark D'Arney under the headline "NSW Govt plead guilty to Perisher sewage spill" states:

The New South Wales Government has pleaded guilty in the Land and Environment Court to charges resulting from a large sewage spill at the Perisher Ski Resort in the State's Snowy Mountains this year.

The Environment Protection Authority took action against the Crown over the spill, which saw hundreds of thousands of litres of partially-treated sewage escape from a holding pond into Perisher Creek.

The Crown has pleaded guilty to a category two offence, which carries a maximum fine of \$250 million.

The action involves the National Parks and Wildlife Service which has overall responsibility for the ski resort and the Department of Public Works which was supervising the construction of the Perisher sewerage scheme.

Concerns were raised about the design of the sewerage scheme before the spill and the government later appointed consultants to come up with modifications.

Potentially we face a very dangerous situation and many of these problems can be solved if skiers are accommodated outside the national park. Towns such as Jindabyne and Adaminaby, which are located outside

the park, are suitable places for large-scale accommodation. Some impacts are a direct result of resort operations. The operation of large-scale ski resorts within a pristine alpine environment causes direct environmental damage. Vegetation and rocks are removed to provide smooth runs. Snow making requires water to be pumped from the creeks and rivers. Runs are groomed by large machines, which damage alpine herbs and grasses. Skiers drop rubbish and cigarette butts, which pollute streams. Most honourable members would be familiar with the article by environment writer James Woodford in the *Sydney Morning Herald Weekend Edition* 8-9 December issue about the plight of the pygmy possum. The article stated:

Mountain pygmy possums carry a world of worries on their little shoulders.

Climate change is shrinking their habitat, development has degraded it, feral cats salivate over them and their main prey, bogong moths, carry arsenic into the alpine country from the agricultural lands of NSW and Queensland.

To add to it all, research suggests they may be sleep deprived, perhaps contributing to a recent collapse in the possums population in its two NSW strong-holds—Mount Blue Cow and Charlotte Pass.

The marsupials hibernate in boulder fields buried under the snow, some of which are in the most popular ski run areas. As counter-intuitive as it seems, snow is a fantastic insulator for the animals, acting like a doona, says Dr Linda Broome, senior threatened species officer for the National Parks and Wildlife Service.

During her research, however, she noticed that skiers and snow boarders banged around above the hibernating possums, making noises that possibly woke them up. Normally the pygmy possums stir only 7-10 days, but skiers may be disturbing them far more often than that.

Waking up from hibernation used up valuable energy, she said, possibly preventing them from surviving the winter.

"During the poor snow season last year a lot of skiers and snow boarders were really thumping into vegetation," Dr Broome said. "A lot of people have no idea that they're skiing over possums and possum habitat."

Skiing and snow boarding also compact the snow. "It's like squashing down a doona—it gets rid of the air in the snow and therefore the insulation."

The possums, which have bodies only 10 centimetres long and weigh as little as 30 grams, live in Victoria and NSW. It is thought their total population includes about 1520 females but 1200 of these live south of the border.

Although Victorian populations seem relatively stable, NSW possum numbers are crashing.

Last year at Mount Blue Cow the population fell from 16 males and 38 females down to two males and 16 females. The Charlotte Pass colony has decreased by a third since 1997.

Next winter the ski resorts and the state's NPWS will be running a campaign to encourage people to stay away from the possum's habitat and will rope off about 10 hectares of ski slope.

Signs will be erected and posters will be put on display about the pygmy possums in the resorts across the mountains.

A spokesman for Perishable Blue said it was important for people to realise there was a habitat under the snow. "The pygmy possums are a part of our environment up here," he said.

That is another example of a significantly endangered species. Enlarging these ski areas and allowing a growing number of people to use them will cause serious problems for these populations. Therefore, any expansion of the resorts will cause serious environmental damage, which should not be permitted in a national park. Sections of the ski industry have long resented the role of the National Parks and Wildlife Service [NPWS]. There is a widely held view that NPWS control has been detrimental to the industry. Despite this view, NPWS has approved a series of major resort expansions in recent years. The submission of the sub-lessees to the Walker inquiry regarding the extension to the KT2 reads:

In September 1990 the NPWS extended the area role of KT2's head-lease by the free gift of extra land which was part of the road reserve comprising the northern shoulder of the Alpine Way. The purpose of this gift was to allow KT2 to take responsibility for the fire-main water pipe line within this land. Within months KT2 commenced proceedings to sell this land to those sub-lessees whose leases bordered the Alpine Way. These sub-lessees had no commercial alternative but to meet the asking price determined solely and arbitrarily by KT2, otherwise they would have lost their sole means of access to the road and any car parking spaces, previously available to them. The "negotiations" were one sided and obviously made under duress.

We now know from evidence discovered by the Coronial Inquest that the NPWS were fully aware of lease sales and of the tactics being employed by KT2. Mr Huggett now a senior manager with KT2, but then a manager with the NPWS wrote to KT2 objecting to KT2's "opportunistic fund raising endeavours". Despite this knowledge no further attempt was made to protect the sub-lessees interests (or to secure any of the windfall benefits for the NPWS). The individual sub-lessees were left to "negotiate" the best deal they could, notwithstanding the obvious inequity in the negotiating positions and the obvious conflict of commercial interest in the KT2 position created by the legislative structure.

Each of the expansions has resulted in the creation of new leasing arrangements for the resort operators, resulting in the de facto privatisation of the park. The approval for the construction of a major new apartment



complex at Perisher Blue is the most recent example of the co-operative attitude that has been applied by the NPWS. So far, the Government has resisted a campaign for the section of the park where the resorts are located to be removed from the park. However, this bill means that the industry has achieved the de facto removal of the ski resorts from the park. The bill brings the break-up of the park a step closer. Essentially Bob Carr has now elected to follow the lead of Jeff Kennett in Victoria. A few years ago the Kennett Government excised a large part of Victoria's major alpine park comprising ski resort areas. Ironically, the current Victorian ALP Government is considering returning the land to the park.

The Greens urge the Government to find other ways of managing the park that recognise that economic use of the park can occur provided that ecological constraints are respected. There needs to be much greater emphasis on activities that do not require large-scale infrastructure within the park. Ski touring, bushwalking, trout fishing and many other activities can be enjoyed without the need for major new construction. Accommodation outside the park can be upgraded, with public transport links to popular destinations. For example, the village of Adaminaby could become a major new accommodation centre. This is a critical time for the future of Kosciuszko. The bill may appear to solve the complex problems that led to the terrible Thredbo landslide, but such a view is overly simplistic. Short-term, quick-fix solutions are no substitute for proper solutions that address the complexity of issues that must be dealt with.

The Department of Planning is not the proper agency to attempt this task alone. The bill could have provided a role for the Department of Planning in providing assistance to the NPWS in relation to infrastructure issues without stripping the NPWS of planning power. Like so much of this Government's planning legislation, the bill is simply a hollow shell for future planning instruments. The Government claims that an REP and SEPP will contain the detail of the new planning regime. The Greens are not reassured by this claim, which removes the detail from scrutiny by Parliament. In the case of this park and all other national parks in New South Wales, the NPWS, in accordance with the legislative framework of the National Parks and Wildlife Act must retain control.

Just yesterday in this place we debated the detail of the National Parks Act. The Act lays down a substantial process for park management plans. However, this bill sweeps away that process. There is nothing in the bill to ensure that the park management plan will override the regional environmental plan and the State environmental planning policy. The Greens will propose amendments to limit the area of the ski resorts to the current resort boundaries. The amendments will at least ensure that the environmental damage caused by the resorts is contained at current levels. Without such limits, the bill reinforces the delusion that resorts can continue to expand indefinitely in this area. It is a very sensitive area. It is an area of great significance to many people in Australia and, for that matter, worldwide. It needs to be protected at all costs.

This bill is another step along the line of the Government becoming increasingly unpopular with small but significant organisations within the community. It will be interesting to see how long it takes, as the Government betrays these small groups in the community, before that adds up to a significant avalanche, dare I say, of community concern against the Government. So there will be problems for the Government at the next State election. It is betraying the very constituency that put the Government in office in the first place.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [7.36 p.m.]: The Australian Democrats have some concerns about this bill, which strips powers from the National Parks and Wildlife Service and gives them to the Minister for Planning. The changes to the planning laws contained in the bill, for ski resort areas within Kosciuszko National Park, are too broad and will remove national parks from the planning process. They will bring local government-style planning to the ski resort areas in the national park, but it goes too far in the sense that it does not have a good enough feedback loop to local people.

The new planning regime could apply to non-ski resort areas of the park. Also, leaseholders would not require consent from the National Parks and Wildlife Service, who are the owners of the land, before submitting a development proposal. The Minister for the Environment will have no role in the planning approval, and National Parks and Wildlife Service advice could be ignored in setting planning regulations and considering approvals. The Minister assured us at the end of his speech in reply to the second reading debate:

The planning regime that we are putting in place for ski resorts will be rigorous and transparent. The bill will allow us to get on with the job of putting in place an interim State environmental planning policy and a regional environmental plan.

This is the promise from the Minister, but like many bills that come before the House, this bill gives all power to the Minister. Given that we were concerned about the National Parks and Wildlife Service's management of urban development in an unusual geological environment—granite country with slip areas—the service

probably ended up yielding too much to the head lessees who were keen to have sub-lessees in close proximity to create a village environment and so that people did not have to walk a long way in the snow at night. The net result was overdevelopment on slip country and the tragedy of the Thredbo disaster.

**The Hon. Malcolm Jones:** That is rubbish. The problem was caused further up the hill, by engineering on the road.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** The Coroner's report recommendations most relevant to this inquiry are as follows. First, a poorly designed and placed pipe below the Alpine Way appeared to be the most significant trigger for the main landslide. Second, the Department of Main Roads/Roads and Traffic Authority [RTA] in its role as agent for the National Parks and Wildlife Service, and later technical adviser, failed to advise the NPWS to undertake works on the Alpine Way above Thredbo. Third, concerns were raised by NPWS in the 1970s and 1990s that slippage may occur adjacent to the Thredbo resort that may endanger lives. Fourth, the Coroner raised concerns about the capacity of the National Parks and Wildlife Service to assess properly slope stability issues in relation to the road in the park. Fifth, the National Parks and Wildlife Service appeared to be unaware of the development of hillside building practices in use in other areas in Australia subject to landslip. Sixth, the RTA did not inform the NPWS of the slope risk assessment system it had developed from 1994. Seventh, there was no detailed system of requiring the submission and consideration of geotechnical or other engineering reports by NPWS to fully take into account building in steep Alpine areas. These problems were part of the reason for the landslip.

Pressures, friendships or the general situation led to the National Parks and Wildlife Service, whose chief expertise perhaps was in other areas, allowing developments that led to the pipeline becoming vulnerable to damage in a risk management sense. That put a load on the overlying soil, which finally slipped and caused the destruction of the ski lodge. In response to that tragedy, the NPWS is being removed as the agency responsible for urban communities and road maintenance in Kosciuszko National Park and other areas of New South Wales. The history of the role of the National Parks and Wildlife Service in managing the Thredbo resort is complex and has been influenced by powerful political influences and conflicting interests.

The National Parks Association [NPA] submission to the Walker inquiry is quite instructive. The association suggests that the Thredbo area should be classified as a tourist resort rather than an urban area. The original purpose of the resort was to provide overnight accommodation to skiers during winter recreation in the national park, which was formerly a trust. While the original low-key accommodation was initially compatible with the National Parks and Wildlife Act, economic pressures resulted in expansion of the resort and movement towards development of a village. Since its founding in 1957, the NPA has strongly opposed this expansion. The resort should not be regarded as an urban area because its main purpose is still that of a seasonal ski resort rather than a permanent long-term residence.

The resort expansion was imposed on the NPWS without provision of necessary resources to adequately manage what is now a major resort. Special Treasury allocations have been made from time to time, but they have still failed to provide the necessary resources for the required infrastructure. Annual head lease payments have always been a tiny proportion of the costs borne by the NPWS. The NPA considers that the leaseholders should pay fully for any costs resulting from development of the lease. Any further expansion of the Thredbo resort is incompatible with the objects of the National Parks and Wildlife Act. Thredbo lies well within an environmentally sensitive alpine environment and suitable checks must be provided to enable resort expansion to safeguard the acknowledged world heritage values of Kosciuszko National Park. It should be noted that recent trends in America have seen the reduction of urban areas within some national parks.

Recently the NPA wrote a letter to the Premier about continued efforts to increase bed numbers and to expand and intensify accommodation at Perisher and Smiggins. The NPA advocates increased use of the ski tube to reduce car use to resorts and the placement of accommodation beyond the edge of the national park in towns such as Jindabyne and Adaminaby. The danger is that villages such as Thredbo and Perisher will become even larger, and will become mini cities of high-density buildings that will cause even greater major environmental impact. If larger resorts such as Thredbo and Perisher are utilised more permanently, there would be greater need for expanded sewage treatment plants, and given the failings of the present plants that would be likely to cause more pollution of alpine streams.

Our main concern is that management will be based in Sydney and the influence of the head lessee will therefore be greater. Environmental needs will be neglected by a Sydney-based planning system that is not as transparent as it could be. The legislation is an attempt to fix the problems and deficiencies in the National Parks

and Wildlife Service, but it will create another set of problems in that the Department of Planning in distant Sydney may not be well equipped for this purpose either. I do not believe that this bill clarifies what should be done other than simply handing power to the Minister. I have some concerns about the bill. I foreshadow an amendment that seeks to increase transparency. I am pleased to note that the Government has said that it will accept the amendment—I will speak to the Opposition about it—and will support other amendments that I believe will improve the bill.

**The Hon. MALCOLM JONES** [7.44 p.m.]: The Environmental Planning and Assessment Amendment (Ski Resort Areas) Bill arises out of the Thredbo disaster. That disaster was the result of an appalling lack of planning by an administration that failed the public in its awareness of hydrological impacts of the elements on an area of urban development. The ability to handle the physics of the forces that were exerted against the community in Thredbo is outside the expertise of the National Parks and Wildlife Service. It is a complex issue, and that has been endorsed by the time the Coroner needed to arrive at a ruling, notwithstanding the other issues that delayed conclusions.

The Government promised to compensate the community as it was clearly in error. However, the difficulties that the people and businesses of Thredbo have endured in seeking compensation verge on the criminal. Business people have long since gone bankrupt because the effects of the disaster have taken so long to go through the legal system. They cannot fight for compensation as they should because their financial ability to fund a case—based on their business—was removed by the disaster. Notwithstanding the Minister's promises to compensate people, the Thredbo disaster throws a dark shadow over the abilities of the National Parks and Wildlife Service and its treatment of the people of Thredbo, the victims.

I have long been a critic of the National Parks and Wildlife Service being an agent of local government administration. Therefore, I welcome any moves to transfer planning to Planning New South Wales. I wish it included local government administration but, alas, we live in an imperfect world. The snowfields are an essential fact of economic life for both the National Parks and Wildlife Service and south-eastern New South Wales. They provide revenues approaching \$500 million for the economy. I have made a number of adjournment speeches on snowfield administration, and I wish to draw to the attention of honourable members the types of problems people must put up with.

An employer and proprietor of a business in Perisher Valley received some outrageous invoices from the National Parks and Wildlife Service for capital works on the Perisher sewage plant. The sewage plant in Perisher Valley was upgraded in 1985. At the time this employer received a bill for \$18,000 for the sewage plant upgrade. He was offered a loan over 15 years, either interest free or at a very low interest rate, to pay the \$18,000. This time round there was a major problem with sewage overflow, and I understand that people in Perisher Valley could not go to the toilet for 24 hours. In a ski resort housing 25,000 people, one can imagine that that would be a major issue.

It was highly recommended that the sewage should go through the ski tube and be processed outside the park. However, the National Parks and Wildlife Service knew better and insisted on having it treated in the park. That led to major complications, and when finally completed the work was \$5 million over budget. That employer, who had previously received a bill for \$18,000, then received a bill for \$174,000 and had seven days to pay it. There has been a transition in attitude between 1985 and the present day. I trust that better planning and a new organisation with a different attitude towards the people who pay all the bills—the public—will assist the snowfields.

Cabramurra, a village in the Snowy once used by workers on the Snowy Mountains Hydro-Electric Scheme, is situated right next to Mount Selwyn. I have spoken to this topic and have extolled Cabramurra's virtues during previous adjournment debates in this House. Cabramurra is ideally located to be a dormitory for the Mount Selwyn snowfields. Mount Selwyn is a budget ski resort which many schoolchildren visit each year and where young people learn to ski. There is no development on the Mount Selwyn snowfield itself, but Cabramurra is next door. However, because of the resistance of the National Parks and Wildlife Service, Cabramurra cannot be used for the purposes for which it is suited, that is, as a dormitory for the Mount Selwyn ski resort.

That is nonsense! It is there, so why not use it to best advantage for the benefit of the community? The philosophy within the National Parks and Wildlife Service stymies development, planning and commonsense. That philosophy has passed its use-by date. I want to address some of the comments made during the second reading debate. The Hon. Ian Cohen referred to the glories of skiing, and I absolutely endorse his comments.

However, those on his side of politics have been active in trying to do away with snowfield development—for all time, so far as I know. Specifically, in 1990 there was an initiative called Ski 2000, a planning process for the snowfields from 2000 onwards.

The Hon. Dr Arthur Chesterfield-Evans referred to comments by the National Parks Association [NPA]. I have a letter on my files from the National Parks Association, signed by a whole range of people—including the late Milo Dunphy, who wanted to do away with ski resorts altogether! He wanted to clear them all out. I do not think that quoting the NPA is a good place to start from, if we are to have snowfield planning reforms. One has to be either pro-skiing or anti-skiing, and it is wrong of the honourable member to try to have two-bob each way. The Hon. Ian Cohen said that snowfields development cannot be expanded indefinitely. He is absolutely right. One of the things a ski resort on the ranges needs is altitude. When you go over the ranges you quickly lose altitude and the hard snow base on which to put a ski resort. If you want to have ski lifts, you have to have a hard snow base on which to put them.

The winds from the south-west that bring the snow do not dump on that side of the range, which is in a snow shadow and is mainly swampy ground. It would be totally impractical to construct a ski resort in that area, for all the reasons I have mentioned. One cannot overdevelop a finite resource. I simply say that I welcome the fact that Planning New South Wales is to take over the planning of the ski resorts. The Hon. Dr Arthur Chesterfield-Evans talked about people having a say in the planning of their ski resorts. As sure as eggs are eggs they cannot have any say in the National Parks and Wildlife Service. There is no chance. The service is here to stay! There is no democratic process with those people. In the absence of proper local government for the citizens of Perisher Valley and Thredbo—who effectively have no say in electing the people who rule them because they are ruled by the National Parks and Wildlife Service—it is to be hoped that they will be able to talk sense with professional planners so that another Thredbo disaster and another sewage disaster can be avoided. I welcome the process with open arms. I support the bill.

**Ms LEE RHIANNON** [7.54 p.m.]: I support the comments of my colleague the Hon. Ian Cohen. He was given new information about this bill at the very moment that he was speaking, and did not have the opportunity to incorporate it fully in his contribution. I will pick up on some of that information. Kosciuszko National Park is very special. That is one belief that the great diversity of speakers here tonight have in common. Tragically, we see very different ways in which to keep it a very special place. One of the major concerns of the Greens is the tremendous pressure on Kosciuszko National Park. Indeed, the whole alpine area of New South Wales is under tremendous development pressure. Residential development is considerable in that area and it is driven by the lure of the big profits that can be made.

The early 1990s saw a huge increase in that development. For example, in 1994 investors were looking forward to a really good snow season, and \$10.2 million worth of property changed hands in just that year. At that time Sydney investors were getting the money, with snow rentals up to \$4,300 per week. Interestingly, at times summer rentals were even higher. Big money could be made and it was estimated that approximately 65 per cent of people buying into the area in the early 1990s were from Sydney, obviously from a certain part of Sydney.

A large advertisement published in the *Snowy Times* in the mid-1990s described the area as, "The most spectacular land in the Australian alps". One advertisement that sums it up stated "Squatters Run" and noted that stage 1 was ready for immediate occupation. They were whipping up the atmosphere, as real estate agents do as part of their stock-in-trade, but it certainly underlines both the profits to be made and the extraordinary pressures on the area. At the end of the last decade, Thredbo featured strongly as being very popular with developers. The real estate section of the *Sydney Morning Herald* in August 1999 carried the following comment: "Thredbo prices stay on an upward curve". That trend continued throughout the 1990s.

That trend brought massive numbers of people to the area. Once again I emphasise that the Greens are not talking about locking up Kosciuszko National Park; we are talking about managing it in such a way that it will be there for everyone to enjoy. If we continue to go down the path we are presently treading, with the sewerage problems, the flattening of the ski slopes and the overdevelopment, the beauty that is the attraction of the area will eventually be compromised and, indeed, lost. To relate some of the figures of the 1990s, a *Sydney Morning Herald* article predicted that "Thredbo snow property prices, which vary from \$100,000 for village bed-sitters to \$850,000 for on-the-mountain's ski chalets," would continue to rise.

For those who are into making a quick buck, the Snowy Mountains area is certainly the place to be, but those who have a commitment to the future of the area need to approach this issue very carefully. Some of the

inquiries into the snowy region have been disappointing but are very relevant to this debate. One inquiry I want to mention was conducted by the Office of the Commissioners of Inquiry for Environment and Planning. The Commissioner, William Simpson, reported in November 1998 on the "Proposed Perisher Range Village Master Plan" inquiry. That inquiry was incredibly disappointing for many of us who worked hard to preserve environmental integrity because it supported more resort development in the order of 1,320 beds, including 800 beds for Perisher Blue. In addition, the inquiry recommended:

That the NPWS reviews its policy as expressed in the 1988 PoM (amended 1994) in respect of permissible uses in designated Ski Management Units (Perisher Range) to enable approval of uses and recreational facilities both indoor and outdoor which will facilitate and encourage use of the resort area as a year-round tourist destination.

This was intended to improve the market position of Perisher Blue, which, according to the inquiry:

... is being eroded because of lack of on-mountain accommodation. Market share projections show that the Perisher Range resort area will lose market share in coming years if this situation is not addressed. In 1997 Perisher Range had approximately 39% of the total Australian market and 65% of the NSW market. Its market share is expected to fall to approximately 58% of the NSW market or 30% of the national market by 2000.

That sums up why the likes of the Greens and the various community and environment groups that we worked with were so disappointed with the inquiry. It was about servicing Mr Packer, in essence, and various of his camp followers. The inquiry recommended that accommodation on the Perisher range in Kosciuszko National Park should be expanded by at least a third. While the inquiry did not adopt Perisher Blue's ultimate ambition to double the accommodation capacity of Perisher resorts by adding 3,500 new beds, it endorsed the case for considering future expansion. The inquiry also overruled a National Parks and Wildlife Service plan to cap the increase in bed numbers at about 1,000. It is sometimes asserted that the service is ruling out all development but this case shows that this is not so. The Greens would have had concerns about some of the numbers being put forward by the service, but even that proposal, which could have been seen as a compromise, was overruled.

The National Parks Association, which has done so much to protect our parks—its work is cut out for it in view of what is happening in this State—at the time said that the inquiry had "fundamentally misunderstood" the role of the Kosciuszko park, which is listed as a UNESCO international biosphere. A few recommendations of the inquiry are relevant to the debate: The current Perisher plan of management should be rewritten to boost recreation and entertainment activities; representatives from Perisher Blue, Kosciuszko Thredbo Pty Ltd and the NSW Ski Association should be appointed to the new Alpine Regional Planning Committee—the best analogy there would be Dracula in charge of the blood bank—and the small Guthega resort, which was to be phased out under the service's original Perisher master plan proposal, should be retained.

What a one-sided inquiry! I need to put on record who we are dealing with when we are talking about Perisher Blue. Its directors include former ALP powerbroker and Senator Mr Graham Richardson. It is 73 per cent owned by Mr Packer's Murray Publishers Pty Ltd, with the balance held by Transfield Corporate Pty Ltd. I did not have time to pull out the figures for corporate donations but we do know that Transfield is always at the top of the table when it comes to donations to the Labor Party. I think that in some years it has given more to the Labor Party than to the Liberal Party. The company's managing director, Mr Ashley Blondel, said that Perisher Blue would continue to press for a total of 3,000 to 3,500 new beds on the Perisher range, including up to 2,000 on the car park site. So even the results of the inquiry did not satisfy these people.

This is a key time for New South Wales alpine areas. Commercial and development pressures are enormous. National parks do not just look after themselves; national parks need to be managed and managed wisely. We are not getting wise management from the Carr Government. The bill now before us and the bill that was passed by this House yesterday show a new level of deception in this State. I was in Tasmania last week and many Green people down there think that Mr Carr is a wonderful Premier because he has created so many national parks.

**The Hon. Doug Moppett:** Many people turn green when they see him.

**Ms LEE RHIANNON:** I acknowledge that excellent interjection. Legislation introduced by the Labor Government compromises what most people believe is the purpose of a national park: to look after nature and to provide environmental integrity. There is extraordinary misinformation.

**The Hon. Patricia Forsythe:** The only person giving misinformation in this debate is you in your appalling contribution.

**Ms LEE RHIANNON:** I am pleased that Ms Patricia Forsythe has had time for dinner and is now able to join us.

**The Hon. Patricia Forsythe:** I have been listening to the debate upstairs, so do not verbal me.

**Ms LEE RHIANNON:** I did not verbal you at all, but I am pleased that you have been able to join us. I urge members to closely consider the Greens amendments when we are in Committee.

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [8.06 p.m.], in reply: I will not even bother to reply to some of the accusations and wild allegations from Ms Lee Rhiannon. I will just say this: the bill will provide the framework for proper planning in the ski resorts. It is not about massive expansion of the ski resorts; it is not about sidelining the National Parks and Wildlife Service; it is about letting it get on with the job of managing the park. The bill will allow us to put a proper planning framework in place for the park for the first time. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

## **POLICE POWERS (DRUG DETECTION DOGS) BILL**

### **Second Reading**

**Debate resumed from 12 December.**

**The Hon. JOHN JOBLING** [8.09 p.m.]: The Coalition supports the Police Powers (Drug Detection Dogs) Bill. The Minister for Police makes allegations about policy zones. It is ironic that the Minister has introduced as an urgent bill legislation that was proposed by the Coalition in the other House to enforce the right of police officers to use sniffer dogs. Trained dogs are used in police forces throughout the world—it is not peculiar to Australia or New South Wales—for a variety of purposes, including search and rescue. They are also used to retrieve human remains following unfortunate incidents such as honourable members have witnessed in reports of events throughout the world. Dogs are used to detect explosives and drugs and to track escapees from police or correctional custody.

The use of trained dogs to detect drugs is undertaken not only in New South Wales but also in many countries throughout the world. Dogs are used in airports, railway stations and public places, and are extremely effective and efficient. Sniffer dogs have a highly developed sense of smell, are highly skilled and have been trained to detect drugs. They are far more successful than anything mechanical. Concern has arisen as a result of a recent Local Court ruling that the use of sniffer dogs for the purpose of conducting drug detection searches is illegal. For the use of the dogs to be lawful, police must first have a reasonable suspicion that a person is carrying drugs. Quite frankly, most reasonable people in reasonable circumstances would say that that is commonsense. The dogs are highly skilled and highly trained, and their purpose is simply to detect whether a person is carrying drugs.

**The Hon. Michael Costa:** And they are cute.

**The Hon. JOHN JOBLING:** They are much more handsome than the Minister for Police. They are also more efficient and more skilled.

**The Hon. Michael Costa:** They are attractive.

**The Hon. JOHN JOBLING:** I agree that they are attractive, and I am not making a comparison with the Minister in any sense. In a reasonably enlightened age there is an awareness of drug trafficking in this State. It is therefore particularly important to give New South Wales police officers adequate powers to carry out their job—a difficult job, to say the least—by identifying people who are involved in the illicit drug trade, especially those who supply prohibited drugs. I cannot think of anybody who would object to the use of dogs to detect persons who are involved in the use and supply of prohibited drugs.

The purpose of the bill is to ensure that when dog handlers make an arrest, the arrest will stand up in court, all things being equal. I suspect that most honourable members would have been stunned by a ruling that was handed down in the Local Court on 31 October. That ruling cast doubt on whether the procedure will be accepted. Following that decision the Coalition recognised the need to provide certainty, and on 27 November gave notice of a private member's bill to allow members of the New South Wales Police Service to use a dog to detect illegal drugs when they have a reasonable suspicion that a person is in possession of drugs. On the basis of a reasonable suspicion, a search would be permissible.

I was amazed at the Local Court ruling, but I accept that strange rulings are handed down from time to time. However, it cannot be allowed to stand. The use of dogs to detect drugs must be validated. The abilities and skills of dogs are tools that police officers require to carry out the day-to-day detection and arrest of those who are involved in the illegal drug trade. Following notice being given of the private member's bill as a matter of urgency, the Minister for Police introduced this legislation in this House on 6 December—at least a week after the Coalition announced its intention to introduce a similar bill. The delicious irony of the reaction of the Minister for Police is that he recognised that the Opposition was right and its desire to ensure that sniffer dogs may be used was also right. He happily borrowed the Opposition's policy straight off the rack. That is fair enough, because something had to be done.

**The Hon. Doug Moppett:** They didn't have any policies of their own.

**The Hon. JOHN JOBLING:** In this case, they did not. In this case the Minister for Police did not think to take action until he saw what the Opposition had done. In the usual manner, he stole the Opposition's idea. The bill defines "general drug detection" as the detection of prohibited drugs or plants in the possession or control of a person other than during a search that has been carried out after a police officer has formed a reasonable suspicion that the person is committing a drug offence. The bill also sets out where the drug detection power may be exercised and prescribes the manner in which it may be exercised. Despite what some honourable members of this House have said, there is no doubt that the legislation is very tightly controlled.

The concept of general drug detection, which the Minister referred to in his second reading speech, was put on the record by the Leader of the Opposition in the other place a week before the Minister thought of it. I must compliment the Minister on at least having the sense to recognise that the Opposition's policy is right, and that recognition has culminated in the legislation before the House tonight. The general drug detection power will operate in places such as licensed premises, including nightclubs and dance parties, public transport hubs such as railway stations, and other places. When police officers seek a warrant to conduct searches, they must satisfy a court that they have reasonable grounds for suspecting that drug offences are being committed in a public place. They must also outline whether the search will be undertaken by plain-clothes or uniformed police officers.

Under current precedents, it would appear that if a drug detection dog comes into contact with a person during a search, the contact may be considered a trespass. If contact is the ground for making a search unlawful, that is taking matters to a stupid level. It is totally and utterly nonsensical. After all, we are talking about animals, not human beings. The dogs will vary in size from that of a beagle to that of a German shepherd. It would not be possible to always ensure that an animal was controlled to the extent that it would not touch a person accidentally, perhaps as a result of pulling away from its handler. Dogs tend to do such things. Of course, we would all like to think that the dog handlers have absolute and complete control over their charges at all times, but it must be foreseen that in certain circumstances, despite all reasonable precautions, someone will be touched by a dog during a general drug search.

The bill makes appropriate provision for inadvertent contact. Such a provision should not be necessary, but in view of the Local Court determination, its inclusion in the bill is probably very wise. In his second reading speech the Minister emphasised the importance of using trained dogs to detect and arrest drug traffickers. When drug users rather than drug traffickers are detected, those users are encouraged to enter diversionary and treatment programs. I note that the New South Wales Ombudsman will monitor the legislation over the first two years of its operation. While conducting his oversight, the Ombudsman will be required to report as soon as possible after the expiration of that two-year period. The report will be compiled with the assistance of police, who will provide statistical data on the use of the dogs.

There should be no doubt that the Police Powers (Drug Detection Dogs) Bill is necessary because of the vagaries and strange decisions that have emanated from the Local Court. I have noted that some of the amendments relate to the issue of the dogs wearing a uniform. I am not sure how Constable Woof would be dealt with in this regard, nor am I sure whether an operation would be classified as overt or covert.

**The Hon. Duncan Gay:** I'd like to see a dog in uniform.

**The Hon. JOHN JOBLING:** My colleague said that he would like to see a dog in uniform. That reminds me of wedding photos that appeared in the *Newcastle Herald* last Saturday in which a bride was being led down the aisle by her labrador dog, which was wearing a pink tiara. The bridal party comprised four dogs—one female and three males. The male dogs were wearing imitation dinner jackets. That was a little unusual, and I hope that if dogs are put into uniforms we will not see anything like that. We should see something that would be respectable in a regiment. In that way the regimental mascot could be well represented.

**The Hon. Michael Costa:** Fox skins.

**The Hon. JOHN JOBLING:** The Minister suggests fox skins. I do not necessarily agree, but I understand the irony. A uniform would need to be simple and not constrain or inhibit a dog's movement. That could be done, and the dog would be identifiable, but what a joke it is! Throughout the world most dogs are friendly. They walk up to people and in most cases people are happy to give them a pat and the dog gives a lick in response and goes on its way. Most people have no problems with that. It has taken the Minister a week to discover the Opposition's policy, and he appears to have picked it up. The Minister now knows that the Opposition does have policies. The Opposition supports the bill.

**The Hon. HELEN SHAM-HO** [8.21 p.m.]: I am pleased to support the Police Powers (Drug Detection Dogs) Bill, which seeks to clarify the powers of police officers in relation to the use of drug detection dogs, or sniffer dogs. The long title is:

A bill for an Act with respect to the use of dogs by police officers to detect prohibited drugs and plants.

Under this bill, police will be able to use drug detection dogs in licensed premises such as nightclubs and bars, although not in restaurants, and at sporting and entertainment venues, parades and festivals, and on transport lines as declared by regulation. The bill will also allow police to apply to a magistrate for a warrant to use drug detection dogs in locally based operations. The use of sniffer dogs by police is not new. The first police sniffer dogs were introduced in 1979 to perform tasks such as locating missing or deceased persons and detecting explosives. Last year, the New South Wales Police Service received 30 additional sniffer dogs to cope with the demands of the Sydney Olympic Games. Sniffer dogs are extremely well trained and I am told that they are worth about \$100,000 each, and that they are worth it.

**The Hon. Michael Costa:** Who told you that?

**The Hon. HELEN SHAM-HO:** Your adviser.

**The Hon. Michael Costa:** My adviser?

**The Hon. HELEN SHAM-HO:** No, but we were told. Anyone who has seen a sniffer dog in action will know that they have a formidable ability to discriminate between smells. For that reason, sniffer dogs have assisted police in the detection of illegal drugs since 1999, with a high rate of success. In the several thousand cases that have been heard since drug sniffer dogs were introduced two years ago, only four alleged offenders have pleaded not guilty. For the past 15 months or so, the Police Service has used drug detection dogs to detect illicit drugs in nightclubs, hotels, railway stations and streets throughout the State. However, under current law police officers do not have a specific legislative power to use sniffer dogs in public places.

It is in that context that the recent decision in *Police v Darby* was handed down by the Deputy Chief Magistrate in the Local Court. In that case the magistrate found that the actions of a sniffer dog in detecting an illicit substance on a man in a city street constituted an illegal search because it was conducted without reasonable suspicion. As honourable members would know, the Drug Misuse and Trafficking Act 1985 allows a police officer to stop and search a person if the officer has a reasonable suspicion that the person is in possession of a prohibited substance. As a consequence of that decision there has been much uncertainty surrounding the use of sniffer dogs by police.

I assume that this bill has been introduced because of the judgment in that case. I congratulate the Minister for Police on his quick reaction in introducing this bill; he is very proactive. The bill authorises police to use drug detection dogs to carry out what is referred to as general drug detection. As I understand it, that means that when a police sniffer dog picks up a positive scent on a person, and providing the officer is in an authorised location, the officer has a reasonable suspicion to conduct a search. Simply being sniffed by a dog does not in itself constitute a search. I am pleased that the law in that area will be more certain in future.

Sniffer dogs provide a valuable resource for police officers. They provide an efficient and effective method for determining whether a police officer has reasonable grounds for believing that someone may be carrying a prohibited substance. As I said to the Minister for Police, the dogs are worth the money because of their efficiency. Honourable members would be aware that the level of police resources in this State has been inadequate for some time, a matter which concerns me and others. For example, the adequacy of police resources in Cabramatta was thought to be so dire that it was included as one of the specific issues identified in the terms of reference of the General Purpose Standing Committee No. 3 inquiry into Cabramatta policing.



At a Government briefing on 4 December, an adviser to the Minister for Police acknowledged that there was a need for sniffer dogs to be used in areas such as the Cabramatta railway station. I agree totally. That acknowledgment is most appropriate. As the report into Cabramatta policing makes clear, a drug use and drug crime problem exists in Cabramatta. Until recently Cabramatta railway station was the hot spot for drug dealing in New South Wales, with users of public transport regularly approached by people selling drugs. I have been told by members of the community and police officers that as a result of the inquiry the situation in Cabramatta has improved markedly.

Following independent information that I have received, I took the trouble of ringing the local area commander, Superintendent Frank Hansen, to congratulate him on doing a good job. Drug dealing in that area does not operate on the scale that it once did. I am sure the Minister for Police, the Hon. Michael Costa, was told the same thing during his recent visit to that suburb. I hope that he will continue to keep an eye on the suburb so that recent gains achieved as a result of the inquiry and the Government's Cabramatta package do not come undone. I remind the Minister that General Purpose Standing Committee No. 3 will revisit the situation in Cabramatta in the first half of next year. The Minister has already given me a reassurance that he will fully co-operate with that inquiry.

I understand that a number of civil libertarian arguments have been voiced on this bill, as is often the case when police powers are debated. I am also aware that in the case of *Police v Darby*, to which I referred earlier, the Deputy Chief Magistrate expressed the view that the use of sniffer dogs breached international civil rights legislation. I do not know whether that is the case, but for my part I am confident that this bill does not infringe or jeopardise people's civil rights. In truth, this bill does quite the opposite since it places restrictions and controls on the use of drug detection dogs by police officers when previously there were none. I have also heard the argument that people might be unnecessarily humiliated in public if a drug detection dogs makes a mistake in identifying them as being in possession of an illegal substance.

**The Hon. Richard Jones:** They have been, many times, and they were not in possession.

**The Hon. HELEN SHAM-HO:** Yes, I know. I am coming to that. In response to that argument I make two points. First, I remind honourable members that police sniffer dogs do not make physical contact with people, as the Hon. John Jobling said. Police sniffer dogs are trained to pick up a scent and either sit down in front of the person or paw at the ground. They do not touch a person at all. Indeed, they do not even sniff the person. Second, we must balance the prospect of someone being incorrectly identified by a sniffer dog and being searched by a police officer against the escalating problem of drug use and drug crime in this State. I believe that people will find that being momentarily embarrassed in public is a small price to pay. I certainly would not mind.

Whilst I support the use of drug detection dogs, a strict law and order approach to the State's drug problem is simply not enough. As I have said on numerous occasions in this House, we need to introduce more health-based social welfare and diversionary schemes for drug users in this State. We must address the conditions and factors that render young people vulnerable to drug dependency in the first place, such as poverty, family dislocation, social disadvantage and long-term unemployment. Only then will we be able to solve this complex social problem. I support the Police Powers (Drug Detection Dogs) Bill, which I believe will clarify the law as it relates to the use of drug detection dogs by police officers in this State. At the same time, it will provide appropriate safeguards and controls to ensure that individual civil rights are protected. I commend the bill to the House.

**The Hon. RICHARD JONES** [8.31 p.m.]: I oppose this legislation, which is part of the Carr Government's push towards a police State. The Minister for Police may laugh. The Minister's hypocrisy in introducing this legislation is also laughable, given that he himself has used marijuana in the past—and he knows full well that he has.

**The Hon. Michael Costa:** Where's the evidence?

**The Hon. RICHARD JONES:** Do you want evidence? I can provide it, if you want. When sniffer dogs were first used, there was a huge public outcry. In Byron Bay, for example, week after week the story was on the front page of the Byron Bay newspapers. Even the mayor attended a demonstration of 1,000 people and complained about the breach of civil liberties. Many people spoke about how gross it was for police to stop people in the street at random and search them. In Mullumbimby, for example, a teenager was strip searched in the street, but nothing was found on him. The Minister for Police believes it is okay to simply strip search

people in the street. That has happened to many people. One person was stopped and searched for having a hemp wallet on his person. I saw the police in Byron Bay stopping teenagers at random and searching them. Many editorials on the issue have appeared in Byron Bay newspapers. For example, an editorial in the *Northern Star*, one of the major newspapers in Byron Bay, stated:

Who in NSW Police Commissioner Peter Ryan's office authorised the use of sniffer dogs to detect a paltry amount of cannabis on the tourist town's streets a few weeks ago?

This police operation, unprecedented in New South Wales, with the possible exception of random stoppages and searches of cars coming in and out of Nimbin earlier this year (using Customs sniffer dogs), raises serious privacy issues.

Most reasonable people would applaud the frontline role played by police sniffer dogs and their handlers in busting criminals who try to import hard drugs.

These teams are also deployed beyond airport luggage collection areas and shipping terminals to other covert drug operations for big-time seizures.

However, the overkill of directing sniffer dogs on to the general population smacks of an Orwellian police state.

That is a conservative newspaper editorial referring to "an Orwellian police state". The editorial continued:

What was achieved?

A few dozen recreational dope smokers will be hauled before the courts over the coming weeks and be fined. Some of them may launch legal challenges.

In the process, up to 1000 local people and tourists, many from countries with a more liberal attitude towards cannabis, were made to feel like hunted criminals.

Contrast this gung-ho approach with the softly, softly policing of Bob Dylan's Ballina concert.

Police sniffer dogs were not used at that concert. An editorial in the *Echo* written by David Lovejoy stated:

In a three day operation dozens of people were stopped and searched, resulting in three grams of amphetamine and 841 grams of marijuana being found and 55 arrests. The statistics do not convey the sense of invasion and outrage that these incidents kindle in their victims. You can be stopped and questioned merely because there was a joint in your pocket two weeks ago. Or because your partner is a heavy ganja smoker, even though you are not. There have been reports ... of people being bundled into a van for strip searches, and there have definitely been humiliating pocket searches conducted on the pavement in full public view.

If the notion of police sooling dogs on to ... the young and poor in the street to sniff out drugs does not alarm you, imagine teams of tax inspectors stopping well-to-do people at random and examining their financial records. Imagine it done with the maximum amount of arrogance and menace.

Under this legislation police will not stop people in their Mercedes, Audis or other expensive cars, but only those at railway stations. It will be teenagers who will be caught. The Government is targeting young people, 50 per cent of whom use cannabis or have used cannabis in the last year. Incidentally, 40 per cent of people in New South Wales have used cannabis in the last year—including members of this House, I might say. The Government's hypocrisy in introducing this legislation is absolutely astounding, and the reaction from the public has been equally astounding. There is no question but that the Government will suffer for it. The Minister for Police does not seem to realise the impact that the legislation will have on people in the streets.

Some months ago I was stopped outside the Parliament by a businessman dressed in a suit. He asked, "What are you going to do about the drug dogs?" That was the first time I had heard about it. I replied, "What are you talking about?" This senior businessman, who probably earns far more money than members of Parliament earn, had been stopped in the street and searched. Time and again people have told me that they have been stopped in the street at random. David Lovejoy's editorial in the *Echo* continued:

The law, because of its presumption of innocence, does not allow police to conduct random searches on citizens passing by. They must have reasonable grounds to do so. Walking along the street with a dog that has been habituated to certain drugs so that it will show immediate interest in anyone carrying the aroma of its addiction is a cold-blooded policing tactic introduced in Sydney for the Olympic Games last year ...

The law also forbids the victimless "crime" of using marijuana as your social drug of choice instead of the legal drugs tobacco and alcohol.

There are members in this Chamber tonight who have used alcohol, are there not?

**The Hon. Michael Costa:** No.

**The Hon. RICHARD JONES:** Yes, there are.

**The Hon. Michael Costa:** Not me.

**The Hon. RICHARD JONES:** Perhaps the Minister has not, but others have. The editorial continued:

However, community attitudes towards cannabis have mellowed considerably since those laws were framed in the politically paranoid 1950s, and in April last year police were given the option of issuing cautions to people found with small quantities of marijuana instead of arresting them.

Many thousands of people throughout the State are being stopped and searched by police with sniffer dogs, and the public reaction to that has been amazingly powerful. The Minister for Police seems to be totally oblivious to that, much to my amazement. The legislation was initiated as a result of a court case some weeks ago. In the case of *Police v Glen Paul Darby*, the Deputy Chief Magistrate found that a search by a sniffer dog was a breach of international civil liberties. The magistrate referred specifically to Article 17 of the International Covenant on Civil and Political Rights, which provides:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

That is what has been happening during the past several months: people have had their privacy breached on the streets. The Office of the High Commissioner for Human Rights made the following comment regarding Article 17:

Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.

A paper provided by the Redfern Legal Centre gives examples of what happened during these random searches. An article in the paper entitled "Sniffer Dogs in Action" stated:

It's 1 am, early Sunday morning. The DJ came on about an hour ago and now the dance floor is full. The rest of the club is packed and there is a queue forming outside. When the music stops no-one can see what's going on. It isn't until the lights come up a few minutes later that everyone can see the uniformed police and their dogs. They have blocked the exits and a couple are escorting the DJ away from the booth, despite her protests. There is a flurry of activity on the dance floor. People are throwing pills away from them and a few are swallowing one, two, three at once. The police start herding people out the doors. As each person leaves they are sniffed by a dog. In the street, the police have the people who were waiting to get in, lined up being sniffed. There are a few staff in that line too. Whenever the dog sits down in front of a person, they are physically searched by a police officer. One or two employees of the club are searched and it doesn't look like they'll have a job for much longer. One guy who was searched and questioned was out with his new workmates. He didn't have anything on him but he was humiliated in front of them all. Some of them look a bit suspicious of him now. The whole process takes ages and there are people stuck inside for over an hour, just waiting to get past the dog at the door. After a couple of hours, the police take about 25 people away.

These are not heroin dealers; they are only cannabis, ecstasy and cocaine users—minor drug users.

**The Hon. Patricia Forsythe:** If you brought an apple in through the international airport a dog would sniff you there as well.

**The Hon. RICHARD JONES:** That is quite a different matter. That is not random searching of people in the streets just going about their business. A friend of mine who had been in a refugee camp in Poland and had escaped said today, "I came from Poland to escape the police state and now the Carr Government has introduced a police state in New South Wales." An American said to me, "I had no idea that New South Wales was a police state." With random police searches New South Wales will be turned into a police state. I will give another example:

It's 3.30pm on Wednesday. Schoolchildren are waiting on the station platform for their trains home when a police officer and a dog approach a group of girls in uniform. The dog sniffs them and their bags and the officer asks one of the girls whether there have been any drugs in the bags or if she has had contact with anyone with drugs recently. Her friends think it's hilarious but she is mortified.

Here is another story:

It's 7pm, Thursday night. The footpaths are busy with people heading home, or going out for a drink, dinner, just hanging out. Two police officers in uniform are walking the street with a dog. When one guy crosses the road in front of them, they call him

back. They want to know why he was crossing the road—was he trying to evade them? They want to get the dog to sniff him but he insists that they write down that he did not consent to that. This just makes them more suspicious, and sure enough the dog seems to think she's found something. The police ask the man to empty out his pockets right there on the street. There are a lot of people just hanging around for a look. In his pockets there is almost enough hash for a single joint. The police take him to the station.

This man was a user. What an awful waste of police time! In the meantime the dogs do not sniff heroin, only cannabis. A person can walk down the streets of Byron Bay with a kilogram of heroin, cocaine or ecstasy and a sniffer dog would not pick it up—yet if a person carries one-quarter of a gram of cannabis, which is a harmless drug that I have used for 36 or 37 years, a sniffer dog would pick that up. In the past 12 months 40 per cent of people in this State have used cannabis, and they should be able to use it if they wish. If people wish to drink alcohol or smoke cigarettes—and two or three people here used to smoke cigarettes—they should be allowed to do so. If people wish to use marijuana they should be allowed to and, in fact, they do. Recently I was in Amsterdam and although I did not use any cannabis there the coffee shops everywhere were selling different types of cannabis—such as Lebanese wedding hash, Nepalese temple balls, Congolese black, South African Durban poison, almost anything one might wish—and there were no problems on the streets at all. In the flower markets they were selling starter kits for growing cannabis.

**The Hon. Patricia Forsythe:** That doesn't make it right.

**The Hon. RICHARD JONES:** It doesn't make it wrong. Cannabis use in Amsterdam is no more prevalent than it is here, but people in Amsterdam are not being arrested on the streets, they are not having their civil liberties violated. In fact, cannabis is used less here than it is in the United States of America. The Government held the Drug Summit, which was supposed to be the Government's new direction, yet it has ignored the findings of the summit and has moved in the opposite direction. The Carr Government has no tolerance on marijuana users, while heroin users get off scot-free. A question from Ms Lee Rhiannon revealed that 1,584 people have had legal proceedings taken against them, presumably in the past year, and these people are aged between 15 years and 70 years of age. Frank Aitchinson, a 70-year-old man, was arrested for having cannabis even though it was for his partner, who had a brain tumour. He was fined even though the cannabis was for medicinal purposes, yet this Government says it will allow it for medicinal purposes.

Raids have been carried out on Oxford Street and in Kings Cross. On 21 October five raids were carried out and 1,500 partygoers, ordinary people like you and me, were having a good time—some were on ecstasy, cannabis and goodness knows what else, but they were not harming anyone. Nevertheless, the police raid embarrassed them. Only 14 people were charged with possession and a mere four were charged with supply. This raid took up the time of many police officers and cost public money. Sniffer dogs will be resisted by the people. The last time sniffer dogs were in Byron Bay the police were not able to stop anyone because the local people have a telephone tree and they turned up en masse to prevent the dogs from operating. They will do this time and again.

My advice to the people of New South Wales is not to harm the dogs because they are only doing their job, but to pat the dogs, offer them a biscuit—perhaps a hash biscuit—and say, "Sit. See if you enjoy this, mate." The dog will be out of it too! This move will be resisted by the people of New South Wales, who reject the Carr Government's zero tolerance policy on cannabis and its move towards a police state. The Carr Government will suffer as a result at the next election. Many of the people who vote for the Australian Democrats, the Greens and other Independents will not give their second preference to Labor, which has introduced a police state and has proved itself to be a fascist Government. People will not vote them back in if they are going to treat the ordinary citizens of New South Wales like this.

**Ms LEE RHIANNON** [8.46 p.m.]: The Greens strongly oppose this bill, which will legitimise the arbitrary and heavy-handed use of police powers with regard to sniffer dogs. One of the hallmarks of a free and democratic society is that its citizens should be able to go about their business free of the arbitrary intervention of the police. Unless there is an immediate threat to human life—for instance, a bomb threat—ordinary people should be able to walk down the street, catch a train or go to the pub without being arbitrarily searched when there is no reasonable suspicion that they have committed an offence. We would not tolerate police randomly stopping people in Macquarie Street and searching them, for whatever reason, in the absence of a reasonable suspicion that they had committed an offence. Many Opposition members would be the first to complain if they were confronted by dogs on Macquarie Street.

However, this Government has sneakily introduced just that practice. Police are using trained dogs to randomly and arbitrarily search members of the public when they have no suspicion, reasonable or otherwise, that an offence has been committed. It is an outrageous and flagrant breach of civil liberties and it lessens our claim to live in a free and democratic society. I note that the Hon. Patricia Forsythe has once again referred to

the airport. Airports need to be searched. We are not arguing about that, but about the targeting of certain sections of the community in a sensational way. The obvious question arises: Why are the police doing this? It certainly is not to catch serious criminals. In one infamous operation in Oxford Street around 300 police were deployed to raid five clubs. They succeeded in arresting and charging only 19 people. I understand that the majority of these arrests were for possession.

Despite people's beliefs about the rights and wrongs of illegal drug use, no-one could seriously argue that a person on Oxford Street enjoying a night out, carrying a small quantity of drugs for personal use, is a serious criminal. Again I say that the use of sniffer dogs is not about catching serious criminals; it is a stunt. People may laugh at the comments of the Greens, the Democrats and other Independent members on this issue, but they should remember that when there was prohibition of alcohol people also joked about that, but eventually we got rid of prohibition because people saw that it was damaging to the whole fabric of society. One day sense will reign with respect to drug use. We need to get to a point where we can handle drug use in terms of its social and health impacts. Then we will be able to control it. At the moment drug use is not being reduced by the ridiculous tactics coming from the Government.

I return to the case of the 300 police. The real reason for the use of sniffer dogs was the simple fact that one group knew about the raid long before it occurred. We understand that about 36 hours before the raid Channel 9 knew about it, and was assembling its team so it could be there to capture the action for the nightly news scoop. It was a stunt. We see more of these stunts coming from the new police Minister, but this was, purely and simply, another public relations stunt—another bit of shallow and shameful law and order spin from this deeply reactionary Government. But it is a public relations exercise with dangerous implications. Members need to consider that carefully, because there are dangerous implications in running a drug policy in this way. Surely, the inevitable consequence is that people going out for a big night on Oxford Street or any other clubs—

**The Hon. Richard Jones:** Or anywhere in the State.

**Ms LEE RHIANNON:** Yes, anywhere in the State, as I am reminded by Mr Jones. In fact there are clubs all around these parliamentary precincts. What might happen now when people are considering going for a night out? The Greens are hearing anecdotal evidence that people are taking their drugs before they go out. I understand that previously people would take tablets or a few joints with them to top themselves up later, so to speak.

**The Hon. Patricia Forsythe:** And break the law.

**Ms LEE RHIANNON:** Yes, they do. Many people break the law—like alcohol drinkers once broke the law. But society changed its attitude to the drinking of alcohol. I urge members whose drug of choice is alcohol to consider what it would have been like, when they were young men and women, if alcohol had been banned. What would they have done on the big Saturday night out, when they were looking forward to seeing their boyfriend or girlfriend? They would have got a skinful before they went out—just like a lot of recreation drug users do.

**The Hon. Dr Brian Pezzutti:** Speak for yourself!

**Ms LEE RHIANNON:** I do not use drugs. The member knows that that is what happens. That is what many did under prohibition. Many people in this State, because of the crazy use of sniffer dogs, are taking their drugs before they go on their night out. That removes the risk of being caught by sniffer dogs, but it has serious implications for the health of the individuals concerned. That is why the policies of this Government on drugs are so dangerous. The Minister might ridicule the Coalition as a policy-free zone, but the policies of the Carr Government are dangerous and life threatening. Several courageous individuals took the Government to task for introducing this sneaky use of sniffer dogs. They contested a case, and a magistrate ruled the use of sniffer dogs to be an unlawful search. Many people from civil liberty groups and various legal centres had predicted that these searches would be declared illegal, as was upheld by the magistrate. Of course, it should be an unlawful search. It is a fundamental principle that police cannot search people without a reasonable suspicion that an offence has been committed. The Greens argue that that must remain so.

But now, flying in the face of all reason, both legal and moral, the Government has brought forward legislation—effectively an admission that it had acted unlawfully originally—to validate the random use of sniffer dogs. This really is a shameful act by a morally bankrupt Government. It leads us to ask, once again,

where will all this stop? How many more rights is the Government prepared to take away? How much further is the Government prepared to encroach upon our basic freedoms in the pursuit of tabloid glory? If honourable members look at the legislation that rolls through this Chamber they would have to think that more damage would be done. Before members settle back and think that this could not happen to them, I should tell them that the Greens have heard several accounts of individuals being stopped by police after dogs had detected those individuals were carrying prescription drugs.

**The Hon. Doug Moppett:** Have you been stopped for a random breath test?

**Ms LEE RHIANNON:** Yes, I have.

**The Hon. Doug Moppett:** Isn't that even more invasive?

**Ms LEE RHIANNON:** That is something that our society has agreed to.

**The Hon. Doug Moppett:** Our society agrees with the use of sniffer dogs.

**The Hon. Dr Arthur Chesterfield-Evans:** Why not in the dining room and the Chamber?

**Ms LEE RHIANNON:** I think that would be useful.

**The Hon. Patricia Forsythe:** I don't think anybody would be against random breath testing.

**Ms LEE RHIANNON:** That is about driving, which is a special case. And, yes, there have to be controls. People who use alcohol or other drugs compromise their driving ability. Their use is dangerous if people intend to also drive. We all know that. But here we are talking about a different issue involving random searches, and the member knows that to be the case. The use of prescription drugs is very worrying, and this is an issue on which the Government seems to be in a void. More fundamentally, once you start eroding the principles of law that keep us free, which restrain the use of arbitrary power by the State and its agents, then ultimately no-one is safe. Maybe now the Government is picking on easy targets—casual recreational drug users—but these things have a way of expanding once the principle is breached. It most definitely has been breached in this case.

This bill also raises the general issue of drug policy in New South Wales, and the enforcement of the drug laws that are in place. The use of illegal drugs is, as we know, widespread in New South Wales. In many circumstances illegal drug use can be harmful to the individual and to society. The Greens certainly acknowledge that. That is why we speak out on these issues—because we recognise that illegal drug use, from alcohol to hard drugs, can be harmful to the individual. We cannot grapple with that issue and give people the assistance that they need while some drugs remain illegal. Look, however, at the question of what we should do about this issue, and there is no general agreement. That is apparent from tonight's debate. But, when it comes to Government policy on this, the Government clearly has it wrong.

Prohibition of cannabis and other drugs in New South Wales has been, and continues to be, an absolute and complete failure. I defy anyone to deny that the drug tactics of the Government are a complete failure. Where is the evidence that drug use is decreasing? Where is the evidence that people are using less cannabis, less ecstasy, less heroin? I really would like to hear from members of Parliament on this. We just do not have the evidence before us, and that raises a major question about what is going on in the major parties in respect of fighting drugs. Despite the hundreds of millions of dollars spent, despite the tough laws and the stern talking heads, despite even the sniffer dogs, illegal drug use has never been more prevalent than it is today.

**The Hon. Dr Brian Pezzutti:** What nonsense!

**Ms LEE RHIANNON:** And the harm associated with that use has never been more prevalent. I note that Dr Pezzutti interjected, "What nonsense!" I would be interested in any figures he can produce to show that the Greens are wrong. Everything from the experts who work in this area indicates that drug use is increasing. Dog searches will not change that. All that members will do by passing this legislation is give the Government a free kick to do its tabloid trawl once again. Surely, on any objective basis of assessment, the current laws must be considered a complete failure. The Greens will continue to say that because the proof is there. Yet what we get from the Government is more of the same—punitive enforcement measures, tough sentences, tough language and the headlines.

Surely it is the definition of stupidity to keep trying the same tactic over and over despite the fact that it has never worked. The war on drugs in the United States of America did not work, and it certainly is not working in New South Wales. That is what makes this bill so tragic: we are losing our freedoms, not as part of some noble campaign to improve lives and fight oppression, but to continue a tragic path of expensive failure that is responsible for so many people needlessly ending up in gaol or even dead.

**The Hon. Doug Moppett:** Don't kid yourself that you are on any noble cause.

**Ms LEE RHIANNON:** I am not saying this is a noble cause. All we are trying to do is inject some logic into this debate—because it is certainly not there at the moment. I acknowledge the reference to the heavy drug use in which Dr Pezzutti is involved, that is, tobacco.

**The Hon. Ian Cohen:** He is an addict.

**Ms LEE RHIANNON:** I know. I agree with my colleagues Mr Cohen and Mr Jones, who have said that Dr Pezzutti is an addict. That is unfortunate because tobacco addicts have more trouble getting off tobacco than heroin addicts have getting off heroin. Tobacco is deeply addictive.

**The Hon. Dr Brian Pezzutti:** Do you use underarm?

**Ms LEE RHIANNON:** Dr Pezzutti really sinks to low depths. We will only begin to turn around the harm caused by illegal drugs when we change tack and begin to dismantle prohibition.

**The Hon. Patricia Forsythe:** Until you arrived in this Chamber we could have a debate without being personal, we could discuss the issues without getting personal.

**Ms LEE RHIANNON:** I did not get personal, Dr Pezzutti did. Why was he not pulled up? This bill also highlights the problematic nature of discretionary police powers. As was found by the Woods royal commission, giving police discretionary powers inevitably leads to the subjective application of those powers, discrimination and even corruption. Discretionary powers are linked with corruption. Allowing police to deploy sniffer dogs without a warrant is a clear example of dangerous discretionary powers. What provisions are in place to stop those powers from being used in a discriminatory manner?

**The Hon. Dr Brian Pezzutti:** Who writes this stuff?

**Ms LEE RHIANNON:** Can Dr Pezzutti answer why only Oxford Street and Nimbin? Why not Macquarie Street and the Sydney Stock Exchange? The big end of town is where the money is, and drugs cost big money. The Opposition is like the right wing of the Labor Party these days; it is really missing the point. Does the Minister want to be associated with the Opposition? Nobody can tell me why only Oxford Street and Nimbin are being targeted. Apart from geographic discrimination, are we supposed to believe that police will not target individuals based on their appearance? Clearly young people and alternatively dressed people will be targeted by the police. We have heard such anecdotal stories time and time again. It is exactly that sort of officially sanctioned discrimination that creates widespread resentment of the police and of government in general in our society.

**The Hon. Richard Jones:** They are targeting the young and the poor.

**Ms LEE RHIANNON:** The point just made by Mr Richard Jones is so very true. This legislation is at odds with the recommendations of the Drug Summit that police should devote their law enforcement resources to suppliers and manufacturers. Those recommendations, which emanated from the very important summit held in this Chamber, are now being undermined in such a serious way. The Greens will oppose this bill in its entirety.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.03 p.m.]:** The Australian Democrats are opposed to this bill. We believe that it violates basic civil rights, and in the end it will be ineffective. The fundamental question of this bill is whether the use of a sniffer dog, in close proximity to a person, constitutes an invasion of privacy and a search? This is an important concept because the bill empowers police to use sniffer dogs randomly, without the requirement of suspicion. The other argument is that if sniffer dogs are simply a tool that cause police to have a reasonable suspicion, they would then be able to carry out a search within their statutory powers under section 37 (4) of the Drug Misuse and Trafficking Act 1985 and section

357E (a) of the Crimes Act 1900. Privacy is the bedrock of civil liberties. An article in the United Nations Educational, Scientific and Cultural Organisation *Courier* stated:

The recognition of privacy is nevertheless deeply rooted in history. The Bible makes numerous references to it. Jewish law has long recognised the concept of freedom from being watched. There were also protections in Classical Greece and ancient China. The Hippocratic Oath, dating from 300 BC, demands the confidentiality of doctor-patient relationships. Western countries have had protections for hundreds of years by, for example, applying rules to arrest peeping Toms or eavesdroppers. In the early 19<sup>th</sup> century, parliamentarian William Pitt famously wrote, "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter; the rain may enter—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement."

Privacy is extremely important. In the United States of America, unreasonable searches and seizures are protected by the Constitution of that country, which states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Australian Democrats believe that the provisions of this bill constitute an invasion of privacy. The Democrats will move an amendment that will ensure that searches by sniffer dogs are not carried out in public places. There have already been several reported cases where persons, who were subsequently found to possess illegal substances, have been searched in view of the public. On 7 November the *Sydney Morning Herald* reported:

Outside an Oxford Street nightclub DCM, police forced partygoers to stand in groups of five with their legs apart, bags on the ground, facing the wall. A dog handler then walked a chocolate-coloured Labrador past the group.

In the case of university student Claire Clarkson, four other people were allowed to go but she was escorted down the street to be searched by a female police officer in front of hundreds of onlookers.

"The dog was sniffing around but I didn't notice anything unusual about the dog's behaviour" Clarkson says. But the others were allowed to go and the woman said "The dog has identified you as being in possession of an illegal substance."

So she went through my bag, made me take off my boots and socks and shake my top out in front of everyone. It was absolutely humiliating, especially being searched in front of all the people. And especially when you are innocent.

On a radio interview on 2UE, a caller named Emily said:

It was after the dog supposedly detected something on me that it became an issue... just at my local hotel and I had only just walked in and sat down and had about three mouthfuls of beer and the dogs came in.

And in your own local pub you know the people who are involved in those sorts of activities and anecdotal evidence came out that there were actually some people there who were in possession and they just made their way to the toilet and concealed it until after the event.

For whatever reason the dogs came up to me and did whatever they did and reacted in a particular way and the guy with the dog came around and said "We've got our first one."

The interviewer then asked:

Did you have anything on you?

No, absolutely not and I fully co-operated and they took me out the door into a public car park outside the hotel and the lighting was quite bad. It was just going on winter about 6 pm and it was a bit dark so they put me under a spotlight at the entrance to the drive-in bottle shop.

The interviewer asked:

Where everyone could see you?

Oh! Everyone driving down the street, everyone that had to come through the drive-in bottle shop. At one stage I had to move myself and the two lady coppers that were basically doing everything but strip searching me out of the way so a car could drive through and buy their beer.

But there was nothing, I fully co-operated, I had no implements, I had nothing on me, I just sort of question the tactics of someone out into a public area to conduct that type of search, I mean if they really thought I was suspicious and had something on me it would be more appropriate to take me to the manager's office or to the ladies room, or something.

Our civil liberties are already being significantly invaded and this bill has not yet passed. Two cases have explored whether a person being sniffed by a dog is in fact being searched. The basic facts in the case of *Police*



*v Glen Paul Darby*, reported on 31 October at the Downing Centre Local Court, were that on 24 February Mr Glen Darby was standing outside a nightclub on Oxford Street when he was detected by a sniffer dog. He was subsequently searched by police officers and charged with possession of prohibited drugs. The charge came before Chief Magistrate Jerram on 31 October. Jerram determined that the use of the sniffer dog in the circumstances rendered the search illegal.

The crux of the case was the requirement that the police officer form a "reasonable suspicion" that the defendant was in possession of a prohibited drug before conducting the search. The defendant argued that the use of the dog commenced the search and that the police officer had not formed a reasonable suspicion prior to the dog's sniffing around the defendant and indicating the detection of a scent by pointing its nose at the defendant and sitting in front of him. The prosecution argued that the use of the dog was not part of the search and that the physical search by the police officer was undertaken only when the dog indicated that it had detected a prohibited drug on the defendant. The police used the dog's reaction to form a reasonable suspicion. In finding that the use of sniffer dogs rendered the search illegal, Jerram stated:

I find what police dog Rocky did in fact to be a search and therefore being the cause of the police forming what no doubt were reasonable suspicions because it precedes the formation of those suspicions to not come within s 37 of the Drug Misuse and Trafficking Act.

This law was in the pipeline before these cases came to court. Sniffer dogs are now used to create reasonable suspicion that then enables the police to conduct a search. The Law Society feels, as I do, that this is an invasion of privacy and, in its briefing note to us, states:

Police do not have (and should not have) power to randomly detain and search a person in the absence of a reasonable suspicion. It is the view of the Law Society's Criminal Law and Children's Legal Issues Committee that any police activity which involves:

- police using dogs to detain or direct a person in any way, and/or
- the dog coming close to (within 1 metre) or touching a person,

constitutes a search and should not be permitted without reasonable suspicion.

Parliament must decide between harm minimisation and invasion of civil rights. That is the linchpin of this argument. The drug war is being lost and attempts to control the use of illegal drugs in society—which is driven by popularity and economics—are increasingly invading civil rights. As those attempts continue to fail, that invasion becomes more and more oppressive. We are repeating the prohibition debate of the 1930s but this time it is about drugs rather than alcohol.

We have now reached a ridiculous stage. I hope in a few years people will realise that the attribution of a moral dimension to the use of illegal drugs for recreational purposes is an absurdity and that invading civil rights does not produce the same social benefits as taking an intelligent approach to drugs, such as judging them according to their pharmacology and medical effects rather than in a moral context. The latter is a superior approach. I hope that we will take that approach one day and that silly laws such as this bill will be consigned to the dustbin of history where they belong—although this law is unfortunately being born before our eyes tonight. We naturally do not support the bill, but it looks suspiciously like it might be passed by the House.

**The Hon. PETER BREEN** [9.13 p.m.]: I am pleased to oppose the Police Powers (Drug Detection Dogs) Bill. In doing so I note that the Leader of the Opposition in the other place first proposed increasing police powers by using sniffer dogs. The Government is now chasing down the Opposition's policy with an attack dog of its own in the form of the new Minister for Police. Those opposite should listen to this; they might learn something.

**The Hon. Duncan Gay**: I am listening.

**The Hon. PETER BREEN**: The Deputy Leader of the Opposition cannot listen and talk at the same time. Among those who lobbied me about this bill is a prominent western suburbs solicitor who said that the purpose of the legislation is to make the police Minister look good. I assured him that nothing could make the Minister look good in the context of this legislation. This bill is a blatant appeal to the worst kind of populist politics: extreme views about law and order. Populism appeals to the left and the right of the political spectrum. While the right emphasises strong leadership, the left demands popular equality.

The bill involves the strong leadership aspect of populism demanded by those from the right of the political spectrum, who are so often represented in history by police with dogs. During Patrick's waterfront

dispute, for example, we were constantly reminded by the union movement of the symbolism behind the black shirts and the guard dogs that defended the wharves against ordinary citizens who were trying to go about their daily lives.

**The Hon. Michael Egan:** They weren't sniffer dogs.

**The Hon. PETER BREEN:** Agreed. This situation is the reverse of the waterfront dispute: an attack dog Minister, a product of the union movement, is introducing legislation to give police and their dogs the power to interfere in the personal and private lives of ordinary people. This legislation is a disgrace to those who promote it. I have mentioned that with this legislation the Minister is chasing the policy of the Leader of the Opposition. Mrs Chikarovski's foreshadowed legislation was a proposed amendment to the Drug Misuse and Trafficking Act 1985, but this legislation goes much further than the Opposition's proposal. The Police Powers (Drug Detection Dogs) Bill will give general statutory powers to police officers to use drug detection dogs in authorised places without the need for a warrant—and therein lies the rub. Those places include hotels, concerts, dance parties—presumably not those featuring the Pride of Erin or the cha-cha—railway stations and bus stops. These are places where young people hang out, and it is young people who will bear the brunt of this legislation. Mark my words, this legislation will create a generation of citizens who hate police. At a time when the police need the community's support, the Minister for Police is introducing legislation that will undermine that support.

Young people will feel affronted, invaded and victimised by this legislation—and with just cause. They will forever view the police with suspicion, and in many cases contempt. Instead of comfort and security, today's young people will grow up with confrontation and alienation as the hallmarks of their relationships with police. By introducing this legislation the Minister is encouraging anarchy and rebellion. He is stoking the fires of discontent that burn in the hearts of a generation of young people who are the victims of economic rationalism and globalisation. As the Hon. Doug Moppett said, the Minister is helping the Greens to consolidate their recent electoral gains. Before the last election 21 per cent of young people aged under 25 voted for the Greens, but at the last election that figure increased to 36 per cent. It is this kind of oppression and repression that is causing young people to rebel against the major parties and established institutions. Writing in yesterday's *Sydney Morning Herald* about the election, Tanya Plibersek, the Labor Federal Member for Sydney, said:

The challenge for Labor is to decide if we can go on competing with the government on who can be tougher on refugees, or whether the time has come for a more sensible, compassionate approach.

The message is the same if I substitute the word "crime" for "refugees". This bill, like so much Labor Party policy, is Coalition policy adopted by the Government. In a debate on self-defence last night, the Hon. Greg Pearce—whom I note the Minister described as another prospective nutter for the crossbench—gave two other examples of the Government stealing Opposition law and order policies.

In earlier debate on self-defence, the Hon. Greg Pearce mentioned two other examples of the Government stealing the Opposition's law and policies. One was the Crimes Amendment (Aggravated Sexual Assault in Company) Bill and the other was the Crimes Legislation Amendment (Existing Life Sentences) Bill, or the cement bill, as the Premier described it. Another bill that we will discuss later tonight is the Courts Legislation (Civil Juries) Bill, which also reflects an Opposition policy stolen by the Government. The challenge for the Labor Party is to decide whether it can go on competing with the Opposition on who can be tougher on crime, or whether the time has come—to use Tanya Plibersek's words—for more sensible and compassionate policies.

**The Hon. Duncan Gay:** We will have to stop developing policies.

**The Hon. PETER BREEN:** The Opposition will have to stop developing policies. Opposition members can keep pinching One Nation's policies and members of the Labor Party can keep pinching Opposition policies.

[Interruption]

The Treasurer should be proud of himself. Tanya Plibersek is an honourable person. Every day in this House at question time I hear the Minister screaming like a banshee at members of the Opposition and saying, "Where is your policy?" I am always puzzled that the answer to the question is not immediately obvious. The Coalition has no policies on law and order because the Labor Party has stolen them. I cannot understand why the Minister for Police does not recognise that when he screams at Opposition members, "Where is your policy?" They have none; the Minister has stolen them.

Even though the time has come for a more sensible, compassionate approach to law and order, the new police Minister behaves like an attack dog, not just in question time but on the question of what is happening in the community. He promised us this legislation on his first official day of his new job. On behalf of the young people of New South Wales and the people concerned about the serious apprehension of drug dealers, thanks for nothing, Minister. Your bill has popular support but so, too, does the death penalty.

Steve Bolt of the Northern Rivers Legal Service says that sniffer dogs are being used for public relations rather than for active policing. Mr Bolt is another person who thinks that sniffer dogs are intended to make the Minister look good. He also says that no dealers have been caught by the dogs in police operations on the North Coast—an important point. Police are not catching dealers, they are catching young people who are using small quantities of drugs. But, according to Steve Bolt, no dealers on the North Coast are being caught.

**The Hon. Duncan Gay:** No dealers on the North Coast have been caught?

**The Hon. PETER BREEN:** No dealer has been caught by sniffer dogs on the North Coast. During police raids on the cannabis cafes at Nimbin on 14 May this year two people were arrested on supply-related grounds. But neither arrest was the result of sniffer dog identification. The legislation is not consistent with the Government's purported policy of targeting dealers—a policy that held such great promise at the Drug Summit, as has been pointed out by other honourable members. Last week I asked the Minister for Police a question about the raid on the Oasis and Rainbow cafes at Nimbin. I was particularly concerned about the man who was found to be carrying prescription drugs. These drugs apparently caused what is known as a "false positive" identification by the dogs. I understand that that is a common problem. So far, the Minister has not been able to answer the question.

Another incident is related in a recent publication by the Redfern Legal Centre entitled "The Cold Nose of the Law", written by Mollie Tregoning. The Redfern Legal Centre interviewed a number of people about their experiences with sniffer dogs. In one case an interviewee named Martin was apprehended with one gram of cannabis. The document states:

Martin was then left on the street next to the car while the officers talked amongst themselves and joked about him and what would happen to him in court. He was eventually handed a piece of paper and the police left. The paper was a caution. The whole process took approximately forty-five minutes.

Martin stated that he was worried about the implications of the possession of drugs. He was concerned about being deported. He felt that during the time he was left waiting by the car, the police were playing with him and acting in an unprofessional manner. He felt disillusioned in the police. He felt he could have no confidence in them, and that anything could happen to him, depending on their whim. He felt that they were not acting 'by the book'.

I refer to another case cited in the same document that involved an interview with Chris, who is a student at Sydney university. The document states:

Chris was searched on the platform at Newtown railway station at midday on a Thursday. He was on his way to university. He was sitting on a bench on the platform when the woman seated next to him reached out to pat a dog which was on a long lead accompanied by two people in 'nondescript' clothing. The handlers told the woman not to touch the dog. The dog then thrust its head against Chris' backpack and sat down close to him. Two detectives approached, also dressed in 'nondescript' clothing. They informed Chris that the dog had detected the scent or possession of drugs and proceeded to search his bag. Every section of his bag was searched; the detectives inspected crumpled pieces of foil and biscuit crumbs, and flipped through the reader Chris was reading for his university course. They had him empty his pockets. During the search, three people Chris knew passed him. He repeatedly asked the police to note that he was not consenting to the search but did not observe any of the four officers do so. He asked to leave and asked to call a lawyer but was told he could not until the detectives had finished.

The detectives did not find any drugs in their search. They then asked Chris to show them a valid train ticket. His identity was radioed in despite the absence of any drugs in his possession, or any other misdemeanour. Chris felt intimidated and degraded by the search.

The document continues:

He says that the operation was conducted by officers from Lakemba command and that they were probably targeting an area where they were most likely to get a 'result'. He doubts that the strategy will have any effect on dealing: 'drug dealers do not catch public transport'.

I received a letter from Marsden Solicitors, which states:

The second thing is that I remind you about what happened to me down at the Snow. I was down the Snow watching night skiing. I was sitting with a group of people. I advise that a helicopter arrived with two policemen and sniffer dogs aboard. The sniffer dogs sniffed all the lines of people at the Snow. I was told by people at the Snow that this happened at least once or twice a week.

This seems to be an amazing waste of money. I can assure you that when you go skiing, and I've been skiing for years, you don't take dope with you or, for that matter, any other drugs. It would do too much damage to one's skiing activities.

I must say that when the dog jumped on some poor family man, his two kids freaked out. The Police searched him and found nothing and I thought what a wasted exercise that was.

**The Hon. Duncan Gay:** I cannot believe they helicoptered two dogs in.

**The Hon. PETER BREEN:** Mr Marsden said he was there.

**The Hon. Duncan Gay:** That does not sound right.

**The Hon. PETER BREEN:** It is in the letter, and Mr Marsden is an honourable man. The problem with the legislation is that it crosses the line between privacy and law enforcement. Nobody would argue—I note that the Hon. Patricia Forsythe raised this issue in debate—with the use of sniffer dogs at airports and other places where luggage and cargo are stored. But drug dealers and smugglers are not going to get caught at licensed premises, sporting events, concerts, or even dance parties. As for including bus stops and train stations or arriving by helicopter in the snowfields, it is arrant nonsense to suggest that drug dealers and smugglers will be apprehended when police have lost the element of surprise.

Police invariably know the drug dealers. If police have suspicions about a person they can get a warrant and by all means use a sniffer dog to approach a suspect. But to approach a commuter, for example, without suspicion and without a warrant, flies in the face of every principle I know involving lawful search and detention. Some people make the mistake of comparing police sniffer dogs with random breath testing. I note that the Hon. Doug Moppett made some comments about this. The difference is that drunk drivers are a danger to the rest of the community as well as to themselves.

Clearing up after the mess caused by a drunk driver is horrendous, in relation to both the financial cost to the community and the emotional and physical damage to people maimed and killed on the roads. If I am stopped by a breathalyser unit I feel as though I am assisting in some small way to keep the road toll under control. The impact of random breath testing has been spectacular in saving lives and preventing injuries.

**The Hon. Doug Moppett:** I notice that you put a higher value on the result.

**The Hon. PETER BREEN:** If that is placing a higher value on the result, so be it. The impact on the community of police using sniffer dogs in the way contemplated by this bill is so different from random breath testing that it beggars belief. Police sniffer dogs will not save one life or prevent one injury. What they will do is engender a huge amount of resentment against the police and undo whatever good work the Minister has done since he began his new job. By this bill he will provoke more antipathy and distrust of the police and cancel out any amount of good he might achieve in the apprehension of drug offenders. The Minister is setting up the Police Service for ridicule and derision. Again I quote from "The Cold Nose of the Law":

It is apparent that the use of aggressive policing tactics does alienate the community, and makes those affected by police actions less likely to co-operate in the future or even ask for police assistance. As the use of sniffer dogs is a strategy which has not shown any significant success in reducing the supply of illicit drugs, this breakdown in good community relations is entirely disproportionate to its ends.

Although I am opposed to the bill, I recognise that it will become law unless the Minister undergoes some conversion between now and the end of debate, which I doubt will happen. Given the inevitability of the legislation, I will move two amendments in Committee, one to require the keeping of records about the use of dogs and the other to require the police commissioner to report annually to the Minister about a number of matters involving costs and resources. Without proper records and reporting, the Minister will have no idea whether the use of dogs is an effective weapon in the war on drugs. Perhaps he does not want to know and only wants to look good, as some critics have suggested. I oppose the legislation.

**The Hon. Dr PETER WONG [9.31 p.m.]:** I support the Police Powers (Drug Detection Dogs) Bill. Taking drugs is wrong, particularly non-prescription drugs, including narcotics, cannabis and ecstasy. We cannot be seen to in any way encourage and support the taking of any non-prescription drugs. Taking drugs can be harmful to one's health and can be totally harmful and destructive to our community. It is totally irrational to argue that because alcohol is legal, we should legalise ecstasy and cannabis. One should try to control and limit the harm that any drugs cause, and it is illogical to try to extend the usage of different types of drugs. One should try also to promote a healthy lifestyle and to avoid taking drugs. I do not see why parties should promote taking drugs, smoking cigarettes, and drinking alcohol to excess.

I have spoken to many people, some of whom live in suburbs such as Cabramatta, about this matter. They are distressed and disgusted by police inability to detain and search drug dealers. I firmly believe that suburbs such as Cabramatta will be much better places because of the provisions of this bill. I am sure the people who live in Cabramatta support the bill. The bill is unfortunate but necessary; it will help to stamp out non-prescription drug taking and drug dealing. It is not true to say that drug dealers do not travel on trains. Just ask the people, community leaders, and members of Parliament who live in Cabramatta: they will tell you that they do. And do not tell me that drug dealers do not sell ecstasy at discos. That is a joke.

**The Hon. Doug Moppett:** Of course they do.

**The Hon. Dr PETER WONG:** Of course they do. Therefore, I support this bill fully.

**The Hon. IAN COHEN** [9.33 p.m.]: I look before me and think of the wondrous drug in which this group of people on the opposite side of the House is indulging. I think of just one drug: power. It is used by every member of the main parties. Power is a drug and we see people consumed by it. We see populism growing with power. Members in this place are losing contact with so many people in the community, which is why they are having such a hard time at the polls and why their votes are going down across the board. In an earlier speech today I said to the Government that alienating different sections of the community has a cumulative effect, which becomes evident in the polls. That process is just starting, but you are alienating so many people in the community in so many areas, including environmentalists across the board, by introducing draconian legislation and thinking that some sort of popular victory will be gained.

**The Hon. Dr Brian Pezzutti:** Is that a new hemp jacket?

**The Hon. IAN COHEN:** The Hon. Dr Brian Pezzutti, one of the major drug users in this Parliament, is asking me about this jacket. If he really must know, I bought this jacket when I was in Gunnedah during a Standing Committee on State Development inquiry. I bought this jacket from St Vinnie's.

**Reverend the Hon. Fred Nile:** You should leave it to the poor people.

**The Hon. IAN COHEN:** I paid them extra, but Reverend the Hon. Fred Nile is right: perhaps it was unfair. I occasionally shop like that in the western areas because I find many interesting articles of clothing that have been discarded. So many people in those areas are suffering hardship, but they will not solve their problems by ignoring them and, instead, indulging in a populist kick against the drug issue.

As a member of the committee inquiring into the establishment of the medically supervised injection room I travelled on the Kirketon Road bus one evening and met a number of people who quite openly were walking around with syringes in their top pockets filled with heroin ready for their shot later in the night. At least they were collecting clean syringes. But they will not get busted by sniffer dogs because their heroin is already in the syringe. This bill will not catch them.

I ask the Minister how many people are actually caught with small quantities of heroin? How many dogs are trained to pick up small quantities of heroin like that? This bill applies to cannabis, not heroin. It is just more of the constant targeting of the easy find—the soft drugs. The reactions of so many members of this Parliament do not mean that they take drugs or promote the taking of drugs. It is just part of the culture.

**The Hon. Dr Brian Pezzutti:** Yes you do.

**The Hon. IAN COHEN:** Excuse me, I do not promote the taking of drugs.

**The Hon. Dr Brian Pezzutti:** Yes you do.

**The Hon. IAN COHEN:** The Hon. Dr Brian Pezzutti promotes more drugs than I do.

**The Hon. Dr Brian Pezzutti:** That's just not true.

**The Hon. IAN COHEN:** If it is by example, the Hon. Dr Brian Pezzutti takes more drugs than I do.

**The Hon. Dr Brian Pezzutti:** Point of order: I take objection to what the honourable member said and I want him to retract it.

**The ACTING-PRESIDENT:** Order! The member has been asked to withdraw the statement.

**The Hon. IAN COHEN:** To the point of order: I witness the Hon. Dr Brian Pezzutti partaking. Therefore, as an example to many people, as a medical doctor and also as an addict to tobacco smoking, that is a very bad example, if we are to make a value judgment to this House on a continuing basis. I believe that my statement was reasonable under those circumstances.

**The Hon. Dr Brian Pezzutti:** I asked that it be withdrawn. I want it withdrawn.

**The ACTING-PRESIDENT:** Occupants of the chair have ruled that the member decides whether a matter is offensive, and if the member asks for a matter to be withdrawn because it is offensive, the matter should be withdrawn.

**The Hon. Richard Jones:** You can say anything then; otherwise it would have to be withdrawn.

**The Hon. IAN COHEN:** I am sorry, Mr Acting-President, I do not have the details, but by example the Hon. Dr Brian Pezzutti is promoting drugs.

**The ACTING-PRESIDENT:** Order! The Hon. Ian Cohen should not canvass my ruling.

**The Hon. Dr Brian Pezzutti:** Withdraw it and get on with it.

**The Hon. IAN COHEN:** I do not withdraw the statement. In actual fact, I feel very strongly about tobacco as a hard drug. By example, as a member of Parliament and as a medical doctor, I feel he is acting in an irresponsible manner by smoking tobacco.

**The Hon. Greg Pearce:** He is not promoting an illegal drug. This bill is about illegal drugs. Your clear indication is that he is promoting illegal drugs.

**The Hon. IAN COHEN:** The Hon. Dr Brian Pezzutti is partaking of a hard drug. I did not say an illegal drug, I said a hard drug. Tobacco is a drug of addiction.

**The ACTING-PRESIDENT:** Order! My understanding is that the Hon. Ian Cohen suggested that the Hon. Dr Brian Pezzutti was promoting drugs. The Hon. Dr Brian Pezzutti has asked that the statement, which he regards as offensive, be withdrawn.

**The Hon. IAN COHEN:** To the point of order—

**The ACTING-PRESIDENT:** The member must withdraw the statement. There is no point of order and there is no latitude.

**The Hon. Richard Jones:** What happens if he doesn't?

**The ACTING-PRESIDENT:** There is no alternative. The member must withdraw the statement.

**The Hon. IAN COHEN:** I withdraw the statement. I did not intend to imply that the honourable member was pushing a drug. The comments highlight in general the hypocrisy about the types of drugs that are allowed and the types of drugs that are vilified in this House. Many people participate in taking a variety of drugs. Society has had drugs with it since its inception. In many ways civilisation has grown on the back of various drugs, such as hallucinogens. Religious ceremonies are connected with drug taking. That does not mean it is a good thing in itself, it does not mean it is to be encouraged. I have not been encouraging the use of drugs in this House.

**The Hon. Duncan Gay:** This bill is not about you.

**The Hon. IAN COHEN:** I acknowledge the use of drugs in this society and that it is incumbent on the authorities to deal with such drug use in a way that shows intelligence, particularly when dealing with young people. I would also like to read from the article that the Hon. Peter Breen read from, "The Cold Nose of the Law", which says:

Sniffer dogs have been sniffing around citizens recently in some unlikely places. They have been used in King Street Newtown, Newtown and Redfern Railway Stations, Happy Valley Dance party, Oxford Street Darlinghurst (on the weekend before Mardi Gras) and on the NSW North Coast at Nimbin, Lismore and Byron Bay. Targeted communities are in uproar about this affront to their peaceful activities.

Now you may think that someone would have to be stupid to need a \$90,000-trained dog to find Cannabis in Nimbin but the NSW Police have about 30 of these hounds with which they are searching people, cars and venues all over the place. In one instance a popular rock and roll venue had the doors sealed by police while officers and handlers took the dogs through searching the black clad cultural fringe.

... if these "searches" are legal, they run counter to the spirit of the law and the concept of a free democratic society when people are in fact being searched and treated as under suspicion simply for doing something legal like having a drink in a bar.

I saw a sniffer dog last night at Rushcutters Bay.

**The Hon. Duncan Gay:** You should have been here in Parliament.

**The Hon. IAN COHEN:** That would not be a bad idea. Many years ago I suggested in this House that we should have a breathalyser at the front doors of Parliament.

**The Hon. Duncan Gay:** You should have been in Parliament.

**The Hon. IAN COHEN:** I was on my way home. I have a right to go home at 1.30 or 2.00 in the morning after Parliament. I was in a taxi watching a sniffer dog as part of a booze bus set-up, and a number of police cars were lined up. That dog was running around without a lead, so I wonder whether the police had the dog under control. The article continues:

There are other reasons why many people find this practice unacceptable. It targets recreational drug users. This may lead to drug users increasing their harm—

This is an important point—

This may lead to drug users increasing their harm, by taking all their drugs at once soon after purchase and it may also increase the number of unsafely disposed syringes if users are afraid of being stopped and asked to turn out their pockets.

This is where the bill will make things difficult. People will take their drugs before they go out rather than going out with a pill in their pocket. Saying that does not mean I justify it or I agree with that type of drug usage, but it is a fact of life.

**Reverend the Hon. Fred Nile:** Have you tried to discourage it?

**The Hon. IAN COHEN:** Yes, I discourage it, unlike some other members. I try to discourage by example.

**Reverend the Hon. Fred Nile:** Have you tried to help them?

**The Hon. IAN COHEN:** I have tried to help. I have perhaps done more to help than many members of this House. One of the ways I help, rather than dictating to people how they should live their lives, is by example. I took home a young man from the north of New South Wales, a right-on-the-line heroin addict who was at death's door. He was a user and had resorted to crime in the inner city. I took him under my roof in the community where I live and I took him surfing. That guy now lives in the area of Byron Bay, surfs and has a reasonably healthy lifestyle. That is what I am talking about, not punishing people, not admonishing them at every turn, but actually taking them out and showing them something else. That is the sort of thing I do and that is the sort of thing I believe in. The article continues:

People charged with simple possession offences make up the vast majority of people who are detected through sniffer dog squad activities. A criminal record is likely to have negative consequences for their employment, educational participation and family relations. It is unlikely that charging people with simple possession offences reduces the number of people who consume drugs or the amount of drugs consumed.

I also ask the Minister—and he may comment on this in his reply—that there be a six-monthly assessment of these operations, so that we look at the number of arrests, the cost and the police numbers used so that the whole process is more transparent. With sniffer dogs operating, people who would otherwise take their drugs at their destination will take their drugs before they leave home and drive under the influence of drugs. An article called "Why aggressive policing of simple drug possession needs to be kept on a tight leash", again from the Redfern Legal Centre, states:

Are police biting off more than they can chew with increased use of sniffer dogs to target users for small scale possession offences? Timothy Moore of the Redfern Drug Policy Project examines the harms associated with the NSW Police services sniffer dogs campaign.

The use of sniffer dogs by the NSW police could be causing more problems than it solves.

... There is a real danger also that these policing tactics could have significant unintended negative consequences. These health and social consequences can result in costs to the community, harms to the drug users while not moving towards the goals of reducing the harm associated with illicit drugs.

The priority areas of policing should be set by the community. Police and National Drug strategies both claim that their major focus of policing under the drug laws is on traffickers and dealers. It is a widely held view that targeting users of small quantities of drugs does nothing to decrease the number of drug users or the amount of drugs consumed. It may however, have significant impact on the harms associated with the use of those drugs.

If injecting drug users are suspecting that they may be stopped and searched they are more likely to dispose of injecting equipment at the point of use rather than returning it to a needle exchange or chemist for safe disposal.

If people are fearful of carrying small quantities of drugs for their personal use they may feel impelled to use all drugs purchased at once, increasing the risk of death or hospitalisation through overdose.

If people are going to a dance party and are to take a drug like ecstasy they will often reduce the risks of harm by asking among friends for a type of pill with which they have experience. They are likely to buy tablets from a recommended source in small numbers for a group of people. The presence of the threat of a dog search can lead to people taking all the drugs they have on their person to avoid detection, even if this amount is far above what they might normally consume.

With other avenues removed and under the threat of dog searches at dance parties people can be thrown into the situation where they can only purchase drugs at the point of consumption. This leaves people without the benefits of knowing the tablet type or the supplier and deprives them of reliable experience from friends about the affect, safety and prior experience with the drug.

For people who receive a criminal record for the small scale possession of prohibited substances it is unlikely to lead them to stop their drug use. People are more likely to stop their drug use when they grow out of it, get bored with it or don't enjoy it as much anymore. Most people who use drugs are not dependent and purchase their drugs wages earned legally.

For people who have a criminal record this can lead to decreased engagement with educational, travel and career aspirations, disrupt their family and personal relations and brand them with a record that may only further their engagement in the criminal environment.

With 78% of adults under 29 years of age having used cannabis enforcement of small scale possession laws criminalises more than half of a generation of young Australians.

**The Hon. Dr Brian Pezzutti:** Are you in favour of decriminalisation?

**The Hon. IAN COHEN:** Yes, I am.

**The Hon. Dr Brian Pezzutti:** Is that the Greens policy?

**The Hon. IAN COHEN:** Yes, it is. The article further states:

The considerable expense of these street level policing operations and the removal of peoples civil rights are unjustified in targeting possession offences. There is no link between the targeting of possession offences and reduced drug consumption or reduced crime. The harms associated with these operations to a majority of citizens makes them simply bad practise.

Byron Bay is my home town, and Byron shire is one spot being targeted by police for the use of sniffer dogs. An article headed "Byron says, call the dogs off!" by Eve Sinton in the *Byron Shire Echo* of 3 April 2001 stated:

Drug sniffer dogs and helicopter raids have triggered a major community backlash ...

**The Hon. Duncan Gay:** It's a disgraceful publication.

**The Hon. IAN COHEN:** It is one of the few publications that are free of big business interests and media controls, and it can give an opinion unfettered.

**The Hon. Doug Moppett:** And also free of any credibility.

**The Hon. IAN COHEN:** That is your opinion. The honourable member may laugh, but the *Byron Shire Echo* is also on the Internet and it gets global coverage. That is not bad for a local paper.

**The Hon. Greg Pearce:** That's what the Internet does, silly!

**The Hon. IAN COHEN:** Exactly! How many papers get that sort of coverage in local communities?



**The Hon. Duncan Gay:** How did the former publisher die?

**The Hon. IAN COHEN:** The former publisher, who was a good friend of mine, was irresponsibly sitting on the bonnet of his son's car while he was severely affected by red wine. That shows how important it is for us to judge all drugs, legal and illegal—

**The Hon. Duncan Gay:** Were other substances involved?

**The Hon. IAN COHEN:** No. Nick Shand was a red wine drinker. His death showed that, driving while under the influence of drugs, legal or illegal, or alcohol is extremely dangerous. He died prematurely and tragically. He was a wonderful asset to the community. Red wine and silliness on one occasion resulted in his death.

**Reverend the Hon. Fred Nile:** He fell off the bonnet?

**The Hon. IAN COHEN:** He fell off the bonnet and under the car his son was driving. An article headed "Call the dogs off" stated:

... there were instances of police abusing their powers by making people believe they had to go to the police station and submit to strip searches even though no formal arrest had been made.

The use of sniffer dogs is bad policy. It's a harm-inducing policy and contrary to the police's diversionary program.

In some situations police have an opportunity simply to give a warning. Rusty Harris was arrested during the first sniffer dog sweep in Byron Bay in March. He said he would take his case all the way to the High Court. His case went to court and was adjourned. The expense of taking sniffer dogs to Byron Bay and walking the streets to catch someone is incredible. The police caught Rusty Harris, who has a long beard and dreadlocks literally down to the seat of his pants. Yet the police needed thousands of dollars of sniffer dog time and training to catch just one person. It is simply compounding the prejudices against people. Another article is headed "Massive drug haul in Byron Shire: In a three day op 18 police seize 70g of cannabis, charge five". I wonder how much that cost; perhaps the Minister could explain that to the House. In a three-day dog operation 18 police staying in hotels in Byron Bay—it must have been very enjoyable—seized 70 grams of cannabis and charged 5 people with possession. The article stated:

In a three day operation last week police seized 70 grams of cannabis and small amounts of speed and ecstasy. Using sniffer dogs and street searches, 18 officers ... scoured several north coast towns, including Byron Bay, Bangalow, Brunswick Heads, Ocean Shores, Murwillumbah and Lennox Head.

In all, 21 people were arrested. Four were charged with possession of a prohibited drug, one with self administering a drug. Sixteen cannabis caution notices were issued.

According to a press release from the NSW Police Media Unit, "a small number of protests was encountered in Byron Bay ..."

What the unit failed to mention is that cannabis activist Robin Harrison followed the sniffer dog and its handler about Byron Bay, beating on a drum and singing ditties about drugs and community policing. The handler weaved in and out of streets and back lanes in an effort to avoid Mr Harrison ...

The sniffer dog invasion of Mullumbimby streets was a traumatic affair for one local youth. Matt Le Beau, 17, was sitting on the seat outside the ANZ bank when a very friendly black labrador started sniffing him.

Matt was unaware that he was the centre of a drug operation until he found himself in the middle of a group of men not much older than himself in groovy looking streetwear. After they introduced themselves, he was ordered to take off his jacket and shirt, down to his undies and then a quick peek at his private parts.

They didn't find any drugs so they let him go. Meanwhile Matt was still shaking an hour later, said he had been humiliated and felt paranoid that everyone in his town thought he had done something wrong. He recently left Mullumbimby High School to take up a chef apprenticeship at New Brighton and has lived in the area all his life ...

In Lennox Head several police barred the doors of the town's only pub while three others went in with a golden labrador called Thor who went about the business of sniffing crutches. Thor didn't find anything but apparently upset several patrons who were eating in Ruby's restaurant upstairs as the venue is the social centre of the small town.

**The Hon. Duncan Gay:** In Alice's restaurant.

**The Hon. IAN COHEN:** This is Lennox Head. Perhaps the Deputy Leader of the Opposition should visit Lennox Head. It is hardly the centre of drug iniquity on the North Coast. The article further stated:

The massive haul worked out at 3.3 grams of cannabis seized per officer per day ... according to police pricing methods.

**The Hon. Dr Brian Pezzutti:** That's not true. Who did that report?

**The Hon. IAN COHEN:** The *Byron Shire Echo*.

**The Hon. Greg Pearce:** Did it put that on the Internet?

**The Hon. IAN COHEN:** It certainly did, and you can sue the newspaper if you think the article is inaccurate.

**The Hon. Duncan Gay:** The *Byron Shire Echo* is always wrong.

**The Hon. IAN COHEN:** If members opposite want to interject, they should say something with a little class. Their interjections are denigrating the House. Interjections should have a degree of quality.

**The Hon. Doug Moppett:** Interjections tend to reflect the quality of the speech.

**The Hon. IAN COHEN:** I disagree with the Hon. Doug Moppett. It is the quality of the legislation that is degrading the level of debate, interjections and the whole ambience of the House. An Australian Associated Press [AAP] report quoted Mr Cameron Murphy, President of the New South Wales Council for Civil Liberties, as follows:

(Sniffer dogs) could be a useful tool, the problem is it's being misdirected where the primary focus of these dogs has been against drug users.

What the Government needs to do is focus their efforts on the Mr Bigs of the drug business, people at the top of the drug pyramid, instead of users in the way they have.

High profile drugs raids using sniffer dogs, such as those conducted recently on five Sydney nightclubs, were a waste of time because they generated few results.

Finally, to quote from the New South Wales Law Society:

Detection dogs—whether trained to find missing persons or to detect drugs, explosives or other dangerous articles—are a very valuable and highly adjunct to law enforcement investigations.

However, dogs are also used as an intimidatory agent and to assist police in detaining a person so that the dog has the opportunity to smell him or her. People react in varying ways to the actions of the dogs, including embarrassment, distress and fear. While the Committees do not have access to data about the incidence of false positive indications from dogs, anecdotally these do occur. A false positive alert by a dog would add to the distress of the situation and exacerbate the infringement of the person's right to privacy.

Police do not have (and should not have) power to randomly detain and search a person in the absence of a reasonable suspicion. It is the view of the Law Society's Criminal Law and Children's Legal Issues Committees that any police activity which involves:

- police using dogs to detain or direct a person in any way, and/or
- the dog coming close to (within 1 metre) or touching a person,

constitutes a search and should not be permitted without reasonable suspicion.

Another AAP report quoted Mr Carr as saying that sniffer dogs had been extremely effective, especially in keeping drugs out of prisons. That is agreed. Do the job properly in the right areas, but do not harass people in the streets with tiny amounts of various drugs that are widespread throughout society. Deal with it in a positive way and leave the sniffer dogs to work in customs and areas where they are hunting down the big drug dealers in society. I strongly oppose this bill, as did my colleague Ms Lee Rhiannon.

**The Hon. GREG PEARCE** [10.02 p.m.]: Yesterday the *Sydney Morning Herald* editorial, under the heading "Advice for Mr Costa", stated in part:

The question is whether, in playing the political game, Mr Costa will settle for the shadow if he cannot have the substance. Will he be satisfied as long as he and the Carr Government are able to survive the storms of public controversy over law and order that inevitably envelop the police portfolio?

Although the Opposition supports the bill, the manner of its introduction proves the lie in the Minister's proclamations that he is open to listening to and debating the complex and sensitive issues of crime and drugs. He has already fallen into the Carr Government formula of media spin and arrogance. I remind the House of the

Government's appalling record. I remind the House of the Premier's claim in relation to the Cabramatta project, which was launched with great fanfare in 1997. Early in 2000 the Premier trumpeted the success of his Cabramatta project and announced that there was significantly less crime in Cabramatta and reduced fear of crime in the central business district, and that he had made the community feel safer and more secure. As Sergeant Tim Priest, whom the Minister is not enamoured of, told the parliamentary inquiry into Cabramatta policing, Cabramatta was burning up all around the local area command in respect of drug supply, gang warfare, money-laundering, fraud and an out-of-control drug—

**The Hon. Amanda Fazio:** Point of order: The honourable member is not speaking to the bill. This is just a rehash of one of his usual lectures about why he would make a better police Minister than anyone in the world. As the Premier said, he should go back to the traffic court.

**The ACTING-PRESIDENT:** Order! There is no point of order. Honourable members should confine their remarks to the general thrust of the bill.

**The Hon. GREG PEARCE:** In his second reading speech the Minister claimed:

This bill is the result of in-depth development by the Criminal Law Review Division of the Attorney General's Department, in consultation with the Police Service.

**The Hon. Michael Costa:** What rubbish!

**The Hon. GREG PEARCE:** That is what he said.

**The Hon. Michael Costa:** What rubbish!

**The Hon. GREG PEARCE:** That might be literally true, but it is deliberately misleading. As every member of this House knows, as a number of other speakers have alluded to, and as commentators and members of the public know, recent legal decisions—in particular the case referred to by a number of speakers to the bill, before Deputy Chief Magistrate Jerram—have cast doubt on the legality of using police sniffer dogs to locate prohibited drugs.

**The Hon. Michael Costa:** He used to appear in the traffic court on parking infringement notices.

**The Hon. GREG PEARCE:** The Minister for Police is now displaying his ignorance, which is consistent with the Premier's ignorance, of the legal system in this State. That is a great pity. The police Minister does not even know that we do not have a traffic court in New South Wales. It is embarrassing to have a Premier who is a klutz when it comes to economic matters, a Premier who has no idea about legal issues. But the Minister for Police should at least know about the State's legal system. The fact that the Premier and the police Minister do not know that in this State we do not have a traffic court is absolutely extraordinary.

I commend clause 7 to the Minister. I am sure that if he has an opportunity he will read it one day. Clause 7 outlines the places where dogs may be used to carry out general drug detection. They include public and private premises, including sporting and entertainment venues, as well as bus and train stations and other places. Clearly, these provisions raised concerns to ensure that people's rights of movement, their ability to come and go, and rights of assembly are safeguarded. The Minister claims that the appropriate balance is achieved by the provisions of clause 13, which relates to monitoring by the Ombudsman.

I hope we can generally rely on the good sense of the police handlers of these dogs, but I am not at all convinced that we can rely on the Minister to monitor the exercise of these powers. As we know, the Minister will not be here in two years. He has already signalled his escape from the police portfolio before the people of New South Wales have a chance to pass judgment on him. Given his performance in the last month it comes as no surprise that he wants a way out. His experience and arrogance have already seen him discredited.

**The Hon. Richard Jones:** Point of order: I cannot hear a word that the honourable member is saying because the Minister is making too much noise.

**The ACTING-PRESIDENT:** Order! There is no point of order, but I agree that there is too much noise in the Chamber.

**The Hon. GREG PEARCE:** As I was saying, given the performance of the Minister in the last month or so it is no surprise that he wants a way out. His inexperience and arrogance have already seen him

discredited. Today he finally woke up to the realities of police numbers. His commitments and claims as to police numbers have been shown to be ill informed or, worse, plainly ignorant. Last night in debate on the Police Service Amendment (Promotions and Integrity) Bill the penny dropped. In his speech in reply he retreated from his proclamation that from January 2002 police promotions would take only three weeks instead of the current eight months. He said that he had followed Police Service advice. So there he was again, backtracking from his promise—

**The Hon. Duncan Gay:** Point of order: The Hon. Greg Pearce is trying to make a speech and the very new Minister is doing his best to disrupt. I ask you to draw the Minister to order.

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

**The Hon. Michael Costa:** Point of order: I ask that you ensure that the Hon. Greg Pearce directs his contribution to the bill.

**The ACTING-PRESIDENT:** Order! The member will address the bill.

**The Hon. GREG PEARCE:** I am quite happily addressing the bill. As I recall, a moment ago I was speaking about clause 13 and the Minister's assertion that the rights of people to come and go and to assemble would be addressed by the Ombudsman's monitoring and the Minister's review of the Ombudsman's reports, which were due within two years. As I drew out that proposition—that part of the bill before the House, which the Minister referred to in his second reading speech—I made the point that the Minister would not be here in two years when the Ombudsman delivers his first report and therefore the Minister would not be able to monitor that report. I then pointed out that even if the Minister were here, it would not be much use his reviewing the report. He has already been discredited because of his inexperience, arrogance, lack of information and ignorance.

**The Hon. Jan Burnswoods:** Point of order: A very short time ago you asked the Hon. Greg Pearce for the umpteenth time to relate his remarks to the bill. I beg you, please, to ask him again to keep to the point.

**The ACTING-PRESIDENT:** Order! I am becoming less and less tolerant. I ask members to confine their remarks to the leave of the bill and not to make frivolous points of order. When the Hon. Greg Pearce concludes his remarks I will make a further ruling on points of order.

**The Hon. GREG PEARCE:** Given the time, Mr Acting-President, I will not repeat what is already in *Hansard* and my quite clear explanation as to how my remarks flowed from the provisions of the bill and the Minister's second reading speech. I turn briefly to clause 9, which contains provisions relating to general drug detection, including provisions requiring police dog handlers to keep control of the dogs and prevent their touching people. This is another difficult area of implementation. The dogs must be kept under control. At least the Minister has some experience at keeping the leash on: witness his appalling stunt in Kings Cross with Frank Sartor last week.

The Minister's cross-media stunt was an insult to the hard-working men and women of the Police Service facing the everyday tensions of dealing with the problems in the Cross, including the drug problems. The police were belittled by the Minister's preposterous claim that he would clean up the Cross and sweep away the problems. The bill does make a minor move in the right direction. It was put forward by the Opposition and on that basis we support it. But I do say to the Minister that he needs to deal with the other real problems facing this State: the lack of police resources, the appalling mismanagement of the police at the highest level and the arrogant, media-driven response of this Government.

**The ACTING-PRESIDENT:** Order! Earlier a point of order was taken relating to the use of offensive words. I draw the attention of honourable members to a ruling of President Johnson given on 31 March 1987. I will ask the Clerk to circulate that ruling to members so that they are aware of what is required of them in this regard. I propose to adopt that ruling, as other occupants of the chair have.

**The Hon. Duncan Gay:** It is a very incisive ruling.

**The ACTING-PRESIDENT:** Thank you. It is a good ruling.

**Reverend the Hon. FRED NILE** [10.16 p.m.]: The Christian Democratic Party is pleased to support the Police Powers (Drug Detection Dogs) Bill. The bill will create a system to regulate the use of drug detection

dogs for specific situations and locations. We have received a number of submissions. The Law Society was critical of the bill but a prominent paragraph of its submission stated:

Detection dogs—whether trained to find missing persons or to detect drugs, explosives or other dangerous articles—are a very valuable and highly successful adjunct to law enforcement investigations.

That statement is correct, and that is why the Christian Democratic Party supports the bill. As I have listened to members attack the bill and cite examples of drug use and other matters it has only confirmed my support for the bill and the need for police to use drug detection dogs. The Hon. Peter Breen made a distinction between the use of drug detection dogs and random breath testing for alcohol. He said that random breath testing saves lives but using drug detection dogs does not.

A drug user could be under the influence of drugs and walking away from a rave party. Police stopping that drug user with a drug detection dog may prevent an accident occurring after that person got into a car and drove off into the night. In many cases it has been shown that illegal drugs have been used by the drivers of vehicles involved in accidents. Critics of the bill have stated that drug detection dogs may act as a deterrent. This proves the point. Obviously, the dogs will detect people with drugs, but many people will not carry drugs for fear of detection by the dogs and, hopefully, those people will not use drugs. So use of the dogs would have that added value.

**The Hon. Peter Breen:** One does not follow from the other.

**Reverend the Hon. FRED NILE:** It does follow. You have given examples of it. There is quite a fear now in Byron Bay and other areas. People seem to regard Byron Bay and Nimbin as drug sanctuaries—no-go areas for the police. I object to any area being treated as outside the law. People in other areas obey the law but apparently in Byron Bay people can break the law. That is not right and that is why I am pleased that the police are concentrating on these areas and showing the people of Byron Bay, Nimbin and other places that all people in this State must obey the same laws and there is no special concession for any part of the State. There has to be consistency.

**The Hon. Richard Jones:** Forty per cent of people use cannabis. Forty per cent of people break the law.

**Reverend the Hon. FRED NILE:** Much of the reason for that lies with the policies of the Australian Democrats, the Greens, the Hon. Richard Jones and others, who have been advocating and supporting the use of drugs.

**The Hon. Richard Jones:** Legalisation, yes.

**Reverend the Hon. FRED NILE:** That is why a lot of young people think that they can use marijuana.

**The Hon. Richard Jones:** They do anyway.

**Reverend the Hon. FRED NILE:** I believe that we should be deterring them from using it because it is a harmful drug, as the Hon. Dr Peter Wong indicated.

**The Hon. Richard Jones:** You should tell them the truth about it.

**Reverend the Hon. FRED NILE:** We do not want people to be damaged by the use of those drugs, and I cite schizophrenia as an example. I am opposed to illegal drugs. The Hon. Richard Jones knows that. I am consistent and, in fact, I am the only consistent person in this Chamber, whereas some of the other parties that are pro illegal drugs are opposed to legal drugs. Honourable members should be concerned about the impact of both legal and illegal drugs. It seems to me that in this debate the dogs are the enemy. Honourable members should be reminded of the great value of these trained dogs. Recently I was at the airport and I saw the dogs being used. They are small dogs almost the size of a poodle and they were searching passengers' luggage in a place where overseas visitors' luggage is collected.

**The Hon. Duncan Gay:** It would have been a beagle.

**Reverend the Hon. FRED NILE:** Yes, it was a beagle. It was looking for objects that should be quarantined, but I presume it would also pick up other items. Some members of the public were a little upset.

The dog was sniffing a bag and the officer then had to ask the person for permission to look in the bag to see what was in there. That person was obviously embarrassed, but that episode demonstrates the need for sniffer dogs. They have to be used to identify illegal products, and by "illegal products" I mean those that should be subject to quarantine or prohibition. Honourable members also know that most sniffer dogs have been specially trained to identify explosives, which is another important role.

I am sure that honourable members would appreciate the importance of their training and skill. I understand that sniffer dogs are being used to search for explosives at airports at the point where the luggage is being loaded onto the aircraft. That is also an important role. Dogs have also been used to find missing children and in other important detection work. I notice that the standard operating procedures for the drug detection unit are available through the Internet. Under the heading of "Person Screening", the instructions are set out. I will read them into the record to allay some of the fears that have been expressed by the Greens, the Australian Democrats and others. The instructions state:

The purpose of the Drug Detection dog is to screen the free air space, for the scent of an illegal substance and to detect the origin of the scent.

I should mention that these are the instructions that are given to the police who are handling the drug detection work. The instructions continue:

The dogs will be permitted to walk in public areas and sample of free air space, during this time the dog will avoid contact with persons.

When a dog indicates a positive detection on a person, the handler will inform them by saying "I am Constable ... From the New South Wales Dog Unit this is a drug detection dog who has indicated the scent of an illegal substance emitting from you. I want you understand that you do not have to say or do anything unless you wish, but anything you say or do may later be given in evidence, do you understand that?"

The next stage in the standard operating procedure is that the handler informs support police, who then use provisions of the Crimes Act or the Drug Misuse and Trafficking Act to continue with investigations. The instructions continue:

The handler is then to remove the dog from the scene as soon as practicable.

A case has been reported in that weird paper the *Echo* of dog detection units stopping a person in the main street outside the post office and stripping that person. I question the truth of that report. I believe it is misleading and that it is only trying to create a reaction against the legislation before the House. We are not living in a society that has a Gestapo, which was the case in Germany during World War II, but the police will enforce the provisions of the bill lawfully. If they do not, they will be in a great deal of trouble.

The main reason honourable members have to deal with this legislation tonight is the decision of Deputy Chief Magistrate Mary Jerram, who found that a search by a drug detection dog was unlawful. Apparently it was claimed that the dog touched the person who was being searched. That is what is stated in the briefing notes, but I notice that the court report of the case shows that it seems to be the view of the Deputy Chief Magistrate that the search was an attack on civil liberties. The following report appeared in the *Sydney Morning Herald* on 22 November:

Deputy chief magistrate Mary Jerram found the search was a breach of international civil liberties.

She rebuked the police for arguing that while she had deemed the search unlawful, she still had the discretion to record a conviction because a small quantity of cannabis and amphetamines were found ...

On 21 October, Ms Jerram ruled the search was unlawful because the dog search was conducted without reasonable suspicion. After her ruling, police said that they intended to appeal to the Supreme Court.

She ruled the search unlawful and said, "The contravention is undoubtedly, in my view, contrary to the right of a person recognised by the International Covenant on Civil and Political Rights." She cited Article 17. I accept that she is the Deputy Chief Magistrate, but in my view—and I am not a lawyer—she was wrong. If human rights documents are taken literally—and I emphasise that—a person could hardly do anything. Moreover, a literal interpretation of the articles would make it difficult for police to carry out their duties. Everyone seemed to be shocked that the Deputy Chief Magistrate went down that path in her decision. She seemed to have strong views about the use of drug detection dogs. It was also reported in the *Sydney Morning Herald* on 23 November that, according to a report from the Police Service, only four cases of people being detected in possession of drugs have resulted in pleas of not guilty since drug detection dogs were introduced in 1999. All but four of the offenders accepted that they had been found out and pleaded guilty.

As a result of the Deputy Chief Magistrate's decision, honourable members are now dealing with this bill. I recognise that the Opposition announced plans to introduce a private member's bill along the same lines, and that is why I am hopeful that this bill will have the support of the Opposition. The bill will provide clarity for police operations involving drug detection dogs, ensure that the appropriate safeguards are in place. It will ensure that notice is given to citizens that they may be subject to drug searches because of the presence of sniffer dogs in certain locations. The bill will permit police to use the dogs in licensed premises. It is important to make clear that the legislation provides for two categories of premises. There will be general drug detection in authorised places, which will not require a warrant, and general drug detection in other places, which will require a search warrant. Clause 7 (1) of the bill provides:

- (1) A police officer may, without a warrant, use a dog to carry out general drug detection in relation to the following persons:
  - (a) persons at, or seeking to enter or leave, any part of premises being used for the consumption of liquor that is sold at the premises (other than any part of premises being used primarily as a restaurant or other dining place),
  - (b) persons at, or seeking to enter or leave, a public place at which is sporting event, concert or other artistic performance, dance party, parade or other entertainment is being held,
  - (c) persons on, or seeking to enter or leave, a public passenger vehicle that is travelling on a route described by the regulations, or a station, platform or stopping place on any such route.

A public passenger vehicle is defined as a train, light rail vehicle or bus. For the benefit of those who are concerned about Byron Bay, it seems that such areas are covered under clause 8, which is headed "General drug detection with dogs by warrant" and relates to public places. The clause states:

- (1) A police officer may use a dog to carry out general drug detection if authorised to do so by a warrant under this section.
- (2) A police officer who has reasonable grounds for believing that the persons at any public place may include persons committing drug offences may apply to unauthorised justice for a warrant under this section.
- (3) An authorised justice to whom such an application is made may, if satisfied that there reasonable grounds for doing so, issue a warrant authorising any police officer to use a dog to carry out general drug detection in the public place during the period or periods specified in a warrant.

Those provisions indicate that safeguards are provided in the legislation, which will tighten up the use of drug detection dogs in this State. Previously there may have been more indiscriminate use of drug detection dogs, but now there are two clear categories. The second category requires a warrant; and that requires satisfying an authorised justice that a warrant should be issued. The bill clearly outlines how and where drug detection dogs will be used, and it provides safeguards for people who may be fearful of an invasion of their civil liberties. Those safeguards are the reason the Christian Democratic Party supports the legislation.

**The Hon. ALAN CORBETT** [10.30 p.m.]: I shall speak only briefly on the Police Powers (Drug Detection Dogs) Bill. It may be of interest to honourable members to know that currently there are 30 police dogs in New South Wales. Of those, 18 are used for purposes other than drug detection, which leaves 12 dogs that can be used for drug detection. We should turn our minds to whether the Minister for Police intends to increase the number of drug detection dogs once this bill becomes law. If so, perhaps that matter should be the subject of an inquiry during next year's budget session. If that limited number of dogs is to be effective they will need to be targeted in specific areas. It would be interesting to know which areas the Minister has in mind. That will be revealed in the regulations.

I hope that drug detection dogs will be used fairly across the State. Obviously high crime areas or suspected crime areas will receive priority, but I would be interested to know whether the north shore area is prescribed in the regulations. I will ask questions of the Minister and comment further in Committee. No-one is taking notes on behalf of the Minister while we are debating this bill. I assume that is a sign of his arrogance.

**The Hon. Dr BRIAN PEZZUTTI** [10.31 p.m.]: This simple bill overcomes a problem that was identified by a magistrate and will allow the continuing use of new technology by the New South Wales Police Service. Our friends the Federal police and customs officers have effectively used that technology for detecting many drugs, not only cannabis, and other substances. I am concerned about what is behind the rhetoric of the Hon. Lee Rhiannon. I am disappointed in my colleague the Hon. Ian Cohen, whom I usually trust. Yesterday in the Great Hall of the University of Sydney, the Treasurer gave a speech. I will paraphrase what he said and will add one word to his speech. He said that he suspects that the permissive drug cause is actually little more than a substitute cause—a substitute cause that fills a vacuum, a psychological need to feel self-righteous. It fills a vacuum, especially for those who in earlier times would have been attracted to one of the quite numerous variants of Marxism-Leninism.

It is important that a search that follows detection by a dog is carried out correctly and in accordance with the law. The first report I saw about the use of drug detection dogs was in the *Northern Star*, a newspaper of repute. The newspaper reported that a person was sitting in the street, and a dog came up and sat down beside him. When he bent down to pat the dog, he was confronted by two people who identified themselves as police officers and asked him to accompany them to Byron Bay police station, where he was searched. That is the first indication I had that the New South Wales police had caught up with Kerry Chikarovski's view, which she had expressed some time before, about the use of sniffer dogs. The Federal police and Federal customs agents had been using sniffer dogs for a long time. I support the bill.

**The Hon. JOHN RYAN** [10.34 p.m.]: A former President of the United States of America, Lyndon Johnson, said:

You do not examine legislation in the light of the benefits it will convey if properly administered, but in the light of the wrongs that it would do and the harms that it would cause if improperly administered.

The one concern I have about the debate and the manner in which the Minister has conducted himself in the introduction of this legislation is not the bill itself. The bill may well do a great deal of good work in protecting the community from the illegal drug trade. My concern is that if this legislation is improperly administered by the Minister and his department, it could do a great deal of harm. In relation to the harm the bill might do, I look at the attitude of the Minister towards it. One concern I have is that the Minister said, when discussing this bill after its introduction, that it has nothing to do with civil liberties. The bill has a great deal to do with civil liberties, and it is important for us to properly scrutinise the rights of individuals.

If we propose to interfere with the rights of individuals we should scrutinise those rights and make sure that the bill is properly administered and monitored. I ask the Minister to assure the House that he will properly monitor the bill to ensure that the rights and liberties of individuals are properly protected. The bill will do a lot of good if it is properly administered. If it is not, it could do a great deal of harm. I do not have to give chapter and verse of the harm it might do. It is all in the attitude, and one would hope that the Minister will adopt the correct attitude and demonstrate an understanding that he is doing something very grave. I would appreciate it if occasionally he would show some appreciation for the gravity of the matters with which he is dealing.

**The Hon. MICHAEL COSTA** (Minister for Police) [10.37 p.m.], in reply: I thank all honourable members for their contributions to this important debate. I also thank the critics, some of whom made valuable contributions. Unfortunately, I do not have the same regard for the juvenile comments of the Hon. Greg Pearce. In his pathetic attempts to appear learned he often becomes a windbag; he displays his insecurities by attacking people rather than dealing with issues of substance. It is unfortunate that he chose to go down that path.

The bill was drafted to recognise the need for police to use drug detection dogs to assist in identifying persons supplying prohibited drugs in certain areas. It is primarily aimed at detecting and prosecuting persons committing offences relating to the supply of prohibited drugs or plants. The bill will place beyond doubt the capacity of police to use drug detection dogs, whilst at the same time ensuring that appropriate safeguards are in place to protect the rights of citizens. It authorises where general drug detection power can be exercised and the manner in which it is to be carried out. New South Wales police will have the power to undertake general drug detection in authorised places and general drug detection with dogs by warrant in places as specified for a limited period pursuant to the warrant. However, the warrant must be issued by an authorised justice, adding further protection for the community. General drug detection will also operate on transport lines, as prescribed in the regulation-making power under the bill.

This legislation is consistent with the Government's approach to harm minimisation for low-level drug users. Obviously, some of those users will be detected within police operations. However, the Government has in place effective and appropriate schemes for these people to be diverted to, should the need arise. They may seek assistance to stop using drugs, and that is one of the clear benefits of the legislation. The New South Wales Government has led the way in the treatment of persons who use these harmful substances, whilst cracking down hard on the suppliers of them. The use of drug detection dogs is currently subject to strict police protocols. Expert handlers use these animals to identify prohibited drugs, and this will remain the case. In conjunction with the principles of the bill, we will have the best-equipped drug detection team.

The bill provides that all reasonable precautions should be taken by a police officer conducting a general drug search to stop the dog from touching a person. However, if, despite the best efforts of the police officer handling the dog, an inadvertent or incidental touching takes place, the touching by the dog will not constitute an unlawful search by the police officer. Police appreciate that the safety of all persons involved, and



of the dog, is best served if the dog cannot touch the suspect at all and intentional touching is not authorised by the bill. The legislation provides specific criteria guiding police powers concerning drug detection dogs. It also provides safeguards that recognise freedom of movement by our law-abiding citizens. As a society we value our freedom of movement as much as we value the freedom to be free of illicit drugs. The appropriate balance is achieved in the bill.

**The Hon. Greg Pearce:** Point of order: The Minister is repeating his second reading speech. It is not appropriate for the Minister, in his reply, to repeat verbatim his second reading speech, which has been incorporated in *Hansard*.

**The ACTING-PRESIDENT:** Order! There is no point of order. The Minister may continue.

**The Hon. MICHAEL COSTA:** If the Hon. Greg Pearce listened instead of interjecting, he might learn something. He is simply an insecure windbag. The New South Wales Ombudsman will monitor the legislation during its first two years of operation and report as soon as possible at the end of the two years. Police will assist in the review process by providing statistical data on the use of the dogs. This bill is balanced, and it is strategic in terms of attacking the root cause of drugs in our society. Couriers and dealers in prime locations where drug activity takes place outside private homes are specifically targeted. They are on notice. I commend the bill to the House.

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

**The House divided.**

#### **Ayes, 27**

Ms Burnswoods	Mr Hatzistergos	Mrs Sham-House
Mr Colless	Mr M. I. Jones	Mr Tingle
Mr Costa	Mr Moppett	Mr Tsang
Mr Dyer	Mrs Nile	Mr West
Mr Egan	Reverend Nile	Dr Wong
Ms Fazio	Mr Obeid	
Mrs Forsythe	Mr Pearce	
Miss Gardiner	Dr Pezzutti	<i>Tellers,</i>
Mr Gay	Mr Ryan	Mr Jobling
Mr Harwin	Mr Samios	Mr Primrose

#### **Noes, 6**

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

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

#### **In Committee**

#### **Parts 1 and 2**

**Ms LEE RHIANNON** [10.52 p.m.], by leave: I move Greens amendments Nos 1 and 2 in globo:

No. 1 Page 2, clause 3, line 12. Omit "possession, control or".

No. 2 Page 5. Insert after line 10:

#### **9 Evidence obtained by drug detection dogs inadmissible in respect of possession offences**

- (1) Evidence of any prohibited drugs or plants that are found in the possession or control of a person as a result of general drug detection using a dog (whether or not under the authority of a warrant) is inadmissible in any proceedings against the person for an offence of being in possession or control of the drugs or plants.
- 2) Subsection (1) does not apply to proceedings for a drug offence within the meaning of this Act (that is, proceedings for the offence of supplying prohibited drugs or plants).

Greens amendments Nos 1 and 2 relate to the offence of possession or control of a prohibited plant or drug. The intent is to effectively remove these offences from the bill so that a person could not be prosecuted for an offence of possession or control as a result of general drug detection using a dog. These amendments will not affect prosecutions in relation to the offence of supply, and I wish to emphasise that. By agreeing to the amendments, the Government—and the Opposition is tail guarding the Government—will demonstrate that it is after the big suppliers and drug pushers, not the small users, who will be the only ones being picked up by the bill as it is presently constructed.

Sniffer dogs are expensive assets of the New South Wales Police Service. They require careful training from a young age by a specialised and dedicated handler. I understand that the total cost of putting a dog through all aspects of its training is tens of thousands of dollars—\$90,000 has been mentioned. Consequently, the New South Wales Police Service does not have many trained dogs; indeed, it has only a handful. The Greens believe that it is grossly inappropriate to utilise these scarce and expensive assets for the purpose of arresting and charging individuals with offences of possession or control. It is madness for the Government to introduce legislation to use sniffer dogs in this way, especially when its favourite word is "efficiency". It would be much better to use them in a more cost-effective way. A person who is found with a small quantity of drugs for personal use is hardly a serious criminal or someone who poses a threat to others, and it is unnecessary to have all the dogs on the streets for such a trivial offence.

Tens of thousands of people in New South Wales are guilty of committing this trivial offence every day and with the dogs on the street those numbers will not be reduced. It is important that we look at the impact that this bill will have on the lives of those who may be prosecuted. Many people who otherwise are perfectly law-abiding citizens may needlessly be brought into contact with the criminal justice system and even if they do not end up in gaol it will have a serious impact on them, particularly when they have done nothing wrong except take a recreational drug on a night out. They may suddenly find themselves caught up in some of the worst aspects of the judicial system in this State. Their lives will be disrupted, their careers destroyed and their prospects diminished. In addition, the trauma can be quite considerable.

From the Government's perspective, this provision will unnecessarily clog the court system and cause delays and cost blow-outs. It is detrimental to many more people than those immediately associated with the drug taker. The individual is damaged and the Government loses—or perhaps I should say that the taxpayer loses because in this case the Government clearly thinks it is on a winner. People should not be charged with such a trivial offence that hurts no other person and is so widespread and deeply rooted in popular culture and society in general. It makes no sense at any time and it certainly makes no sense to employ expensive sniffer dogs just to catch a few unfortunate people in this net. I commend Greens amendments Nos 1 and 2 to the Committee. I emphasise that the amendments do not target those who supply drugs. By agreeing to the amendments the Government will show that its real intent is to target the big drug pushers and that it is not seeking just to grab a quick headline.

**The Hon. MICHAEL COSTA** (Minister for Police) [10.57 p.m.]: The Government does not support the Greens amendments.

**The Hon. RICHARD JONES** [10.57 p.m.]: I support the Greens amendments, which will essentially make the Government honest. If it is serious about stopping the drug trade and getting dealers off the street it will support these amendments. Right now the Government is conducting a war on young people, which they are aware of and strongly reject. That is why they have voted for the Greens and other smaller parties. If the Government is really honest about what it is trying to achieve it will agree to the amendments and only concentrate on the dealers, particularly heroin dealers, who are causing the worst misery in our society, and not keep on attacking young people who use cannabis.

**The Hon. JOHN JOBLING** [10.58 p.m.]: The Opposition notes that Greens amendment No. 1 seeks to remove from the definition of "drug offence" the words "possession, control or". The Opposition is not in a position to agree with that and opposes the amendment. Greens amendment No. 2 suggests that evidence obtained by drug detection dogs should be inadmissible in respect of the offence of possession. Again, the Opposition cannot agree to that amendment.

#### **Amendments negatived.**

**Ms LEE RHIANNON**: I do not move Greens amendment No. 3. My understanding is that as clause 7 has not been passed, the amendment is redundant.

**The TEMPORARY CHAIRMAN (The Hon. John Hatzistergos):** Order! The Committee is dealing only with clause 3 at the moment. It is not dealing with clause 7. But I note Ms Lee Rhiannon does not propose to move Greens amendment No. 3.

**The Hon. ALAN CORBETT** [11.00 p.m.]: I seek clarification from the Minister regarding clause 3, Definitions, "public place". As I read the provision, schools are the only places excluded from the definition of "public place". Does this mean that in churches, synagogues, mosques, war memorials and so on a police officer can still, without a warrant, use a dog to carry out general drug detection?

**The Hon. MICHAEL COSTA** (Minister for Police) [11.01 p.m.]: My understanding is, no.

**The Hon. ALAN CORBETT** [11.01 p.m.]: I have a further question for the Minister. I assume that the Minister, when referring to a school, refers to school grounds. Does that mean the school grounds during school hours and after school hours? That is, does the provision apply to school grounds 24 hours a day, or just for a limited period of the day?

**The Hon. MICHAEL COSTA** (Minister for Police) [11.01 p.m.]: My understanding of that would be during the operation of the school.

**The Hon. ALAN CORBETT** [11.02 p.m.]: But it does not say that. It just says "not include a school". The reason I ask the Minister is that some form of entertainment, parade or performance could be conducted at a school, whether in school hours or out of school hours. A group might have permission to be on school grounds after school hours. Drug users standing outside the school, on seeing a police officer approaching with a dog, would simply have to walk onto the school grounds to become part of that entertainment, and therefore not liable to search. I ask the Minister to clarify that—otherwise, this could be a very interesting loophole.

**The Hon. RICHARD JONES** [11.02 p.m.]: A school is a school, not just during school hours—otherwise the legislation would say so.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.03 p.m.]: The advice that I have just been given is that a school is excluded, but if a person is apprehended on school grounds it would depend on the circumstances involved. So, if a school were not operational, or there were not any other activities, and somebody ran onto the grounds, the action that would be taken would depend on the circumstances. I would expect that the police would be within their rights to use dogs in that circumstance.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [11.03 p.m.]: Can I remind this very new Minister that comments made by a Minister of the Crown during the Committee stage of a bill are used for interpretation purposes.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.03 p.m.]: I thank the honourable member for his advice, but I am well aware that that is the situation.

**The Hon. RICHARD JONES** [11.03 p.m.]: I move my amendment No. 1:

No. 1 Page 3, clause 4. Insert after line 13:

(4) Despite subsection (3), if:

(a) a dog is used to search a person under this Act for the purpose of detecting a drug offence, and

(b) the search fails to detect any prohibited drugs or plants in the possession or control of the person,

the State is liable to compensate the person for any loss or damage incurred by the person as a consequence of the search.

There have been numerous cases, published in the media and anecdotally, of people being stopped on the way to work. A Qantas flight attendant stopped on the way to work and strip searched was found to have no illegal substances on her person.

**The Hon. Doug Moppett:** This is only an anecdote.

**The Hon. RICHARD JONES:** This case was published in the newspapers. Anecdote means not published, as the honourable member well knows because he knows his English. But other cases have been

reported in the media. A young man who was searched in Mullumbimby and a young person whom I met on the street outside Parliament, who also was searched, were found to have no illegal substance on their person. There are many cases of people being searched and having their jobs put in jeopardy as a result. A good case could be made for the State to pay compensation to a person who incurs actual loss or damage as a result of a search that reveals nothing—and there have been many of them. No doubt some of those cases will end up in very much higher jurisdictions than the Local Court.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.05 p.m.]: The Government cannot support the amendment.

**Amendment negatived.**

**The Hon. ALAN CORBETT** [11.06 p.m.]: I ask the Minister a question. The key words in clause 5 are "the officer reasonably suspects" that a person is committing a drug offence. Is there in existence a protocol that tells a police officer what is reasonable in these circumstances? If so, where can the public locate that protocol?

**The Hon. MICHAEL COSTA** (Minister for Police) [11.07 p.m.]: There are a set of protocols that the police have to apply when using detection dogs. I have already given a commitment that we will review those protocols if there are any difficulties, in the same timeframe as the general review of the Act.

**The Hon. RICHARD JONES** [11.08 p.m.]: I move my amendment No. 2:

No. 2 Page 4, clause 7, lines 21-26. Omit all words on those lines.

I move the amendment because it is particularly offensive for the Government to target the poorer section of the community and not those who drive their private cars—like Subarus, Volvos, Mercedes, Audis and so on, like we do. We will never get caught with our drugs, if we have drugs on us while driving our cars. I am sure members of this Chamber will be driving their cars while they have drugs.

**The Hon. Duncan Gay**: I drive a Volkswagen.

**The Hon. RICHARD JONES**: You don't! Why don't you upgrade?

**The Hon. Doug Moppett**: Try to make some sense.

**The Hon. RICHARD JONES**: The point is that only one section of the community is being targeted by the Carr Government. They are the poorer people who travel by public transport. It is really offensive for people to be stopped when getting on buses or trains going to or from work. They can be attacked by the police and their dogs while on their way to work or home from work. This has happened on many occasions. People have been embarrassed by being searched on their way to work. As I mentioned earlier, on the street outside these precincts I met a person who had that happen to him. It has happened to very many people.

**The Hon. Duncan Gay**: The Hon. Ian Cohen told us during the second reading debate that police were checking cars at Rushcutters Bay last night.

**The Hon. RICHARD JONES**: The bill does not refer to private vehicles. Does the Deputy Leader of the Opposition want to add them?

**The Hon. Duncan Gay**: It must be able to happen.

**The Hon. RICHARD JONES**: It is not in the legislation. The bill refers only to people getting on public passenger vehicles. It does not refer to private cars. Provision is made for public transport vehicles, not private vehicles. It is offensive that the Carr Government targets the poorer section or the young people in our society.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.09 p.m.]: The Government cannot support that amendment.

**Amendment negatived.**

**Ms LEE RHIANNON** [11.10 p.m.]: I move Greens amendment:

No. 4 Page 5, clause 9. Insert before line 20:

- (3) A police officer who is carrying out general drug detection under this Part is to ensure that the words "NSW Police Service" are clearly displayed on a jacket worn by the dog. This subsection does not apply if the general drug detection is part of a covert operation authorised by a warrant under section 8.

This amendment seeks to require a police officer who is carrying out general drug detection using a dog to ensure that his or her dog is wearing a jacket with the words "NSW Police Service" clearly displayed on it. The Greens are absolutely serious about this amendment. It provides a neat way to ensure the right thing is done by the people of New South Wales and it will ensure that police are able to carry out their work responsibly.

**Reverend the Hon. Fred Nile:** The dog may not like that. What about the rights of the dog?

**Ms LEE RHIANNON:** Reverend Nile, these dogs are highly trained—

**The TEMPORARY CHAIRMAN (The Hon. John Hatzistergos):** Order! The honourable member will address her remarks through the Chair and not respond to interjections.

**Ms LEE RHIANNON:** I apologise. As I said, the Greens are absolutely serious about this amendment as it will bring a small measure of confidence into police operations with regard to drug searches. The amendment makes exception for covert operations in proposed clause 8.

**The Hon. Michael Costa:** This is ridiculous.

**Ms LEE RHIANNON:** No, it is not ridiculous. Again, police can conduct secret operations in which their dogs can participate, but when police are out on the street and on trains and going down King Street—

**The Hon. Doug Moppett:** They should be in uniform.

**Ms LEE RHIANNON:** Yes, precisely, because, as many members have said, people love dogs. When they see a dog on the street, their first inclination is to pat it. Why cannot honourable members agree to this simple measure so that people will not be compromised when they pat a dog on the street with the implication attached that they have drugs. This amendment really seeks to extend traditional practice of random sniffer dog searches. Police officers are required to wear a uniform and plain clothes officers are required to identify themselves before questioning a person. Obviously a dog cannot identify itself. An innocent member of the public, minding his or her business, who is walking down the street will not automatically assume that a cute doggie is a drug dog out on the town doing its work. As I have said, many people are fond of dogs.

I overheard the Minister say that a police officer would be at the end of the leash. I suggest that just because a police officer is at the end of the leash does not mean that people will expect that the dog will sniff at them to see whether they are carrying drugs. We would not tolerate plain clothes police walking up to members of the public to conduct a search without first identifying themselves and without first having a suspicion that an offence had been committed. We would all be outraged by that situation. However, because the agent in question in this case is a dog, the suggestion is that we should let the Government get away with such behaviour. A jacket for police dogs would not be expensive and would not prove a problem for trained dogs to wear. I was surprised by the remarks of Reverend Nile because these dogs are highly trained—

**Reverend the Hon. Fred Nile:** I love dogs.

**Ms LEE RHIANNON:** Yes, I am sure you do. The dogs can be easily trained to wear the coats. They could be made of canvass secured by a string tie. It would be a simple measure to address an attack on one of our fundamental rights.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.15 p.m.]: Unfortunately the Government cannot support this amendment. If the Greens had adopted a suggestion made earlier by the Hon. John Jobling of providing flashing blue collars for detection dogs, we might have been able to do some business.

**The Hon. RICHARD JONES** [11.15 p.m.]: Reverend the Hon. Fred Nile made a good point about the rights of dogs. The dogs do not have any choice about being introduced and made addicted to drugs. Whenever

they see drugs they get excited. But there is a new plan afoot by those who oppose drug dogs to have people offer the dogs hash biscuits and instruct them to "Sit" so the dogs will not know what is required of them in future.

**The Hon. Duncan Gay:** This is the same member who suggested that we spike trees?

**The Hon. RICHARD JONES:** No, I did not. A man in America said that. That was published in an article in *Simply Living* but I did not say that. I merely published someone else's opinion; I did not support it. It was actually *Earth First*, remember?

**Amendment negatived.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.16 p.m.], by leave: I move Australian Democrats amendments Nos 1 and 2:

No. 1 Page 5, clause 9, line 20. Insert "(except section 10)" after "Part".

No. 2 Page 5. Insert after line 24:

**10 Search following drug detection not to be carried out in view of the public**

A police officer who searches a person because the police officer suspects that the person is committing a drug offence, being a suspicion formed as a result of the apparent detection of a prohibited drug or plant by a dog in the course of general drug detection carried out under this Part, must ensure that the search is carried out in a place that is not in view of the public.

Basically, these amendments say that a search of a person following an indication of suspicion from a dog may not be carried out in a public place. There are many instances of false positives when a dog thinks that it has detected a drug and, in fact, a search has found no drugs. I gave examples of such instances in my contribution to the second reading debate and I will not repeat them. I referred to a person who was searched one evening under the light of a hotel near a drive-in bottle shop. She was required by two police officers to shake her top in a public place. The search found nothing.

A friend of mine was stopped by a sniffer dog at Central station. She was very distressed. She was extremely embarrassed because, as she travels at the same time by train each day, she knew many of the people in her carriage, most of whom were wondering why she had been stopped. Apparently she had carried a small amount of marijuana in her handbag some weeks prior to this search—the scent of which attracted the attention of the dog—but there was none in her bag at the time of the search. This was a false positive. My friend was humiliated and upset. Some years earlier she was the victim of a rape attempt when somebody broke into her flat, held her down and tried to rape her. This search caused her to have flashbacks of that offence for quite some time. She found having to stand in a public place, being touched and searched, an extremely distressing experience. She was humiliated in front of her friends.

The Hon. Ian Cohen referred to the person in Mullumbimby who was strip searched in a public place. This is not a trivial matter; it is not a cause for banter and humour. Article 17 of the International Covenant on Civil and Political Rights, which Australia signed and which came into force on 23 January 1993, states:

No-one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence nor to unlawful attack on his honour and reputation ... Everyone has the right to the protection of the law against such interference or attacks.

If these amendments are not passed we will be in breach of the International Covenant on Civil and Political Rights. I ask honourable members to support people's basic right not to be humiliated by public searches conducted on the basis of false positive reactions by sniffer dogs. These extremely reasonable amendments should be accepted.

**The Hon. RICHARD JONES** [11.21 p.m.]: These are fundamental amendments that should be accepted by the Committee. People should not be strip searched in public. On many occasions people have been stripped to their underpants. Is that not strip searching? It is incredibly embarrassing, particularly if no drugs are found.

**The Hon. Duncan Gay:** The amendment is against all searches, not just strip searches.

**The Hon. RICHARD JONES:** People should be taken to a police station and searched there. What is wrong with that? If police officers suspect a person of carrying drugs—they only ever find cannabis—they should take that person to a police station and conduct the search properly. Searches, particularly strip searches, should not take place in the street. I urge the Minister to accept these amendments.

**The Hon. HELEN SHAM-HO** [11.22 p.m.]: This is one of the few groups of amendments I support. I think it is reasonable to conduct searches out of public view. It is not reasonable to embarrass people by searching them in public.

**Ms LEE RHIANNON** [11.22 p.m.]: The Greens strongly support the amendments and congratulate the Hon. Dr Arthur Chesterfield-Evans on moving them. They offer a chance to conduct searches decently. What is wrong with taking a person to a police station to be searched? What is wrong with searching people in mobile vans, of which the police seem to have thousands these days? The police claim they will be organised and will plan these searches in a professional manner—that is the implication in the Minister's comments. These amendments offer a means of making searches more professional and ensuring that people are not humiliated, which is what happens when they are strip searched in public. To those who claim that being stripped to one's underwear is not a strip search, I ask: How would they feel if it happened to them?

**The Hon. IAN COHEN** [11.23 p.m.]: I add my voice to the chorus of support for these important amendments. They are mild amendments and there has been much frivolity in the Chamber this evening.

**Reverend the Hon. Fred Nile:** They would make the bill unworkable.

**The Hon. IAN COHEN:** That is absolutely ridiculous. The amendments provide that if police officers suspect a person of carrying drugs they must remove that person either to a police station or to some other appropriate place nearby to conduct a search. As Ms Lee Rhiannon pointed out, the police could use a suitable vehicle, such as a van.

**Reverend the Hon. Fred Nile:** And spend more money.

**The Hon. IAN COHEN:** That is a most trite comment. Reverend the Hon. Fred Nile is complaining about the cost of having one vehicle nearby so that people can exercise their basic human right not to be searched in public. There have been searches like that in Mullumbimby and in Byron Bay. It is a simple point. If the Government believes such searches are appropriate, it should allow people some privacy and show them some common decency.

It is not just about physical exposure but about the impression that is created. It happened to me. Many years ago—when I had hair and a beard—I handed someone a yoghurt culture and I was searched by police in the street and the back of my car was searched. It was degrading: passers-by assumed I was a criminal. People in this country have the right to be taken somewhere private to be searched. The police have an obligation to organise somewhere to conduct a search properly, even if it is a cubicle such as a portalo.

**The Hon. ALAN CORBETT** [11.25 p.m.]: I agree with these amendments to a certain extent, but I ask the Minister: When would a police officer cease to search a person in public view? At what stage of undress—down to their jocks or bra? We must draw the line somewhere. Police sniffer dogs have been used in the past. Where can the line reasonably be drawn?

**The Hon. MICHAEL COSTA** (Minister for Police) [11.25 p.m.]: Protocols govern the use of police dogs and they require officers to use their discretion when conducting searches in circumstances involving sniffer dogs. I expect officers to use their discretion. Under the current arrangements, officers have the power to conduct searches, and they use their discretion. If they do not, there are procedures in place to deal with that.

**The Hon. RICHARD JONES** [11.26 p.m.]: What are those precise procedures? People have been strip searched. Have the officers involved been dealt with? No. Is the Minister aware of the procedures or is he completely ignorant of them?

**The Hon. MICHAEL COSTA** (Minister for Police) [11.26 p.m.]: There are protocols.

**The Hon. Richard Jones:** What are they?

**The Hon. MICHAEL COSTA:** I am happy to provide copies of the relevant sections of the protocols to honourable members who are interested in seeing them.

**The Hon. JOHN JOBLING** [11.27 p.m.]: The Opposition has some sympathy with the Hon. Dr Arthur Chesterfield-Evans' views on strip searches. However, the amendments state that a search following drug

detection must not be carried out in the view of the public. They do not set out what type of search. Do they refer to a standard search involving the turning out of pockets or to a patting down? The amendments do not refer specifically to strip searches. Therefore, while I sympathise with the Hon. Dr Arthur Chesterfield-Evans' argument, I cannot support the amendments in their present form. The protocols that I suspect will be read to the Committee in a moment detail precisely the procedure that police officers must follow when they conduct a full strip search.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.27 p.m.]: To clarify this point I will read the relevant sections of the protocols regarding strip searches. As I have said on numerous occasions, they make it very clear that police must abide by these protocols. The protocols state:

When searching make a reasonable effort to reduce embarrassment and loss of dignity to those being searched. Conduct the search at or nearby the place where the person or vehicle was stopped. Generally conduct a frisk search only. A strip search cannot be conducted unless clearly justified. If you decide to strip search do it out of view of anyone not needed for the search—at a nearby police station is preferred. It is to be conducted by an officer of the same sex as the person being searched. Where possible conduct the search in the presence of a duty officer, crime manager or supervisor of the same sex as the person. If it is not possible conduct it in the presence of another of the same sex. Record all searches, those present, the reasons for your suspicions, all conversations and actions in your notebook. Ask the person to sign the entry.

As I said earlier, there are detailed protocols that relate to the use of tools by police such as sniffer dogs—protocols that the Government considers important. I said that the bill strikes a sensible balance between civil liberties and the need for the community to be protected from illicit drugs. I am happy to provide copies of those protocols to honourable members who are concerned about this issue. The amendments, which are misguided, in a sense would negate the purpose of the bill.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [11.29 p.m.]: When the Minister finally read out the protocol it became obvious to honourable members that there was not a real problem. However, the anecdotal stories that honourable members referred to present a problem.

**Reverend the Hon. Fred Nile:** They may not be true.

**The Hon. DUNCAN GAY:** They may not be true. If those stories are true, however, those incidents should not have occurred. I hope the Minister gives an undertaking that he will not permit those sorts of incidents. The amendments moved by Arthur are a catch-all.

**The Hon. Jan Burnswoods:** Are you calling him Arthur? I am outraged! After everything you have said in this place about title! You are obsessed with title and you just referred to him as Arthur!

**The TEMPORARY CHAIRMAN (The Hon. John Hatzistergos):** Order!

**The Hon. DUNCAN GAY:** I acknowledge that I have transgressed my own rules. I accept the admonishment. The amendments moved by the Hon. Dr Arthur Chesterfield-Evans would result in no searches being conducted—which would render this bill meaningless. No searches would be able to be conducted. That might be the intention of the honourable member's amendments, but I do not think that is the case. The words used in the amendments are laudable, and their purpose is not to prevent searches from being conducted. It is a pity the Minister did not explain that to us earlier.

**The Hon. Michael Costa:** I said there were protocols.

**The Hon. DUNCAN GAY:** The Minister did not detail the protocols.

**The Hon. Michael Costa:** You did not ask me.

**The Hon. DUNCAN GAY:** It could have been done earlier and better, and we would have avoided this trouble.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.31 p.m.]: I will read all 51 pages if that is the wish of the honourable member.

**The Hon. IAN COHEN** [11.32 p.m.]: I acknowledge the explanation given by the Deputy Leader of the Opposition. However, I believe there is a subtle difference. A sniffer dog squad goes out with a specific target in mind: to apprehend and search people for drugs. That is a little different from, say, the activities of



police on the beat. Their operation is far broader and more general and they are not anticipating, if you like, having to search for drugs. The purpose of the sniffer dog squads is quite specific, and it is not unreasonable that they should have some sort of mobile facility or police van in which to search people in privacy.

**The Hon. RICHARD JONES** [11.33 p.m.]: I agree with the sentiments expressed by the Hon. Ian Cohen. The Minister indicated why the Government should accept the amendment. I ask the Minister: What penalties are there—if any—if these protocols are breached? Apparently these protocols are being breached time and again. Are there any penalties? Can the Minister give us an indication as to whether there are any penalties?

**The Hon. MICHAEL COSTA** (Minister for Police) [11.34 p.m.]: There are severe penalties if police operate outside the protocols of the Police Service, not only in this matter but in other matters. The detailed complaint procedure that is in place has penalties ranging from cautioning and suspension to actual removal from the service. Honourable members should be aware of the complaints procedure.

*[Interruption]*

That is a separate question. I am happy to show any honourable members this detailed code of practice.

**The Hon. Richard Jones:** Just table it.

**The Hon. MICHAEL COSTA:** There are 62 pages that detail the code of practice. I will not table this document but I am happy for honourable members who are concerned about this issue to look at the sections relating to strip searches and other activities.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** [11.35 p.m.]: The Minister read out the protocols relating to strip searches, but that is not the issue with which we are dealing. Leaving aside the absurdity of a strip search, an ordinary search can cause people to be totally humiliated in front of their friends and have their reputation damaged and their privacy invaded. Sniffer dog teams are routinely working at Central Station and in night clubs, and people are suffering the humiliation of being strip searched by police. The Hon. Doug Moppett suggested that these are anecdotal experiences that may not be true. That is fatuous. It was also suggested that it is extremely difficult to conduct strip searches in non-public places, but a portable cubicle with a curtain could be erected anywhere.

**Reverend the Hon. Fred Nile:** A dog could carry it.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I do not think a dog would be able to carry it, but a police officer could carry it. The erection of such a cubicle, which could be transported in the back of a police car and assembled at no cost, would ensure that people were not humiliated. It would not be difficult to do that. My amendments are reasonable. This Parliament should comply with the International Covenant on Civil and Political Rights and not depend on protocols relating to strip searches.

**The Hon. MICHAEL COSTA** [11.36 p.m.]: I did not understand the contribution by the Hon. Dr Arthur Chesterfield-Evans. He started his contribution by saying that his amendments did not relate to strip searches, but he ended by referring to strip searches. I assure the honourable member that there are guidelines for ordinary searches. Underlying all of these issues is the fact that a police officer must have a reasonable suspicion before conducting a search.

**The Hon. RICHARD JONES** [11.36 p.m.]: Will the Minister ensure that officers who go onto the streets with sniffer dogs have a copy of these guidelines so they know what they are doing? That will ensure that they do not keep breaching guidelines that they do not even know exist.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.37 p.m.]: Every officer in the New South Wales Police Service is made aware of his or her responsibilities in relation to the code of conduct. I have here the relevant protocol. I will let honourable members look at it.

**Ms Lee Rhiannon:** Why didn't you know about the protocol for strip searches?

**The Hon. MICHAEL COSTA:** I do not conduct strip searches.

**Ms Lee Rhiannon:** How can you have confidence in your officers?

**The TEMPORARY CHAIRMAN:** Order! Ms Lee Rhiannon will come to order.

**The Hon. MICHAEL COSTA:** The honourable member ought to be aware that I do not conduct strip searches, or any searches for that matter. I do not have access to sniffer dogs, though I would like on occasions to bring one into this Chamber. It would be interesting to see the results.

**Question—That Australian Democrats amendments Nos 1 and 2 be agreed to—put.**

**The Committee divided.**

**Ayes, 5**

Mr Cohen  
Mr R. S. L. Jones  
Ms Rhiannon  
*Tellers,*  
Dr Chesterfield-Evans  
Mrs Sham-Ho

**Noes, 26**

Mr Breen	Miss Gardiner	Dr Pezzutti
Ms Burnswoods	Mr Gay	Mr Ryan
Mr Colless	Mr Harwin	Mr Samios
Mr Corbett	Mr Kelly	Mr Tsang
Mr Costa	Mr Moppett	Mr West
Mr Dyer	Mrs Nile	Dr Wong
Mr Egan	Reverend Nile	<i>Tellers</i>
Ms Fazio	Mr Obeid	Mr Jobling
Mrs Forsythe	Mr Pearce	Mr Primrose

**Question resolved in the negative.**

**Amendments negatived.**

**Parts 1 and 2 agreed to.**

### **Part 3**

**The Hon. PETER BREEN** [11.44 p.m.], by leave: I move my amendments Nos 1 and 2 in globo:

No. 1 Page 6. Insert after line 7:

#### **11 Records in relation to searches and general drug detection**

- (1) A police officer who uses a dog:
  - (a) to search a person or persons for the purpose of detecting a drug offence, or
  - (b) to carry out general drug detection,
 must make written records in accordance with this section.
- (2) Such records must contain particulars in relation to the following:
  - (a) the number of persons searched,
  - (b) the number of occasions on which the dog is alerted to the presence of a prohibited drug or plant on a person or persons but where no such drug or plant is actually found on the person concerned,
  - (c) the action taken in respect of any person who, as the result of a search or the carrying out of general drug detection, is found to be in possession or control of a prohibited drug or plant.
- (3) Records under this section are to be in the form, and be kept in the manner, approved by the Commissioner.

No. 2 Page 6. Insert after line 20:

**13 Commissioner of Police to report to Minister**

The Commissioner of Police is to report annually to the Minister in relation to the following matters:

- (a) the costs associated with exercising the powers conferred on police officers by this Act,
- (b) the total number of police officers and dogs involved in the exercise of those powers,
- (c) the extent to which other police resources are involved in the exercise of those powers,
- (d) the overall time spent by police officers in exercising the powers conferred on police officers by this Act.

In his earlier contribution the Hon. John Ryan made an important point about the consequences of properly administering the legislation. He said that there should be measures to ensure the bill is properly monitored. The Minister said in his reply that police will provide statistical data on the use of dogs for drug searches. These amendments will ensure that statistical data and the related police obligations are stated in the legislation clearly. If the statistics become part of the regulations, which are part of the bill, they will not be open to scrutiny. Certainly, the obligations on police are not clear to those being searched and apprehended. These amendments are in general terms and follow the line of questions I have asked the Minister about whether dogs reacted to substances other than illicit drugs, such as prescription drugs, certain chemicals and certain types of clothing. If proper records are not kept this kind of information will not be available, nor will a proper assessment of the impact of the legislation.

I believe it is a fundamental principle to have the record-keeping system included in the legislation and not just as part of the regulations. Additional regulations are fine, but the obligations of police officers and the kinds of records they will keep—the number of people searched, the results of those searches, how many false positives and that kind of information—must be publicly available to show that the police keep those records, which is the purpose of my amendment No. 1. My second amendment is that the Commissioner of Police is to report to the Minister on the results of the record keeping together with the costs involved in the resources used—I gave an example in my contribution to the second reading debate of the cost to the community in the use of helicopters—and whether the results, apprehensions, amount of drugs found and convictions justified the expenses. I urge the Committee to support these amendments.

**The Hon. ALAN CORBETT** [11.47 p.m.]: I support these amendments. There are only 12 dogs in the whole State. Surely it would not be an onerous task for the 12 officers to maintain those records and for the Commissioner of Police to report the results to the Minister. They are reasonable amendments.

**The Hon. JOHN JOBLING** [11.48 p.m.]: The keeping of records in some form is reasonably essential and perhaps is a basic requirement. These amendments seem to go further and ask for a range of other things for various reasons. The important point is that the records being kept are in a useful form approved by the commissioner and are reasonably simple. It is highly desirable that the information be reported back to the House. I suspect the solution is for the Minister to give an undertaking that such records be kept and that the statistical data be made available to the House regularly. If my memory serves me correctly, I suspect that a protocol may already exist requiring individual officers to fulfil that task. If that is so, and if the Minister reads that to the House, we may find that is sufficient. It is reasonable for the Minister to give the Committee that undertaking tonight, that records will be kept in relation to cost, outcomes and results, the total number of officers and total number of dogs involved in the exercise of police powers, and such other records as the protocols require him to keep.

**The Hon. RICHARD JONES** [11.49 p.m.]: I support the amendments of the Hon. Peter Breen. These are fairly mild amendments and I think it would be advisable for the Minister to support them as well. The Minister himself would want to know these facts. This debate is not going to go away; it will continue for the next couple of years, certainly until the next election. It will be in the Minister's interest to accept these amendments.

**Reverend the Hon. FRED NILE** [11.50 p.m.]: I support the proposition presented by the Hon. John Jobling. Normally these requirements are contained in the regulations. Will the Minister give an assurance that something like this will be in the regulations? What worries me is that we are almost giving a direction to the police commissioner how to run the Police Service and how to run the dog squad. Perhaps other important questions are not listed here. I do not know how long the Hon. Peter Breen spent working on these amendments and whether he has consulted with the police commissioner or anyone else but I do not think it is right for this Committee to think it can direct the police commissioner how he should set up the records.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.51 p.m.]: The Government cannot support the amendments but we can give an undertaking to ensure that proper records are kept. As has been pointed out, the protocol makes reference all the way through it to the keeping of records. In relation to reporting, the Ombudsman is overseeing it, but I am prepared to give an undertaking that an appropriate process will be developed for reporting as required.

**The Hon. JOHN JOBLING** [11.51 p.m.]: I thank the Minister for the undertaking he has given us. Would it be within his power to give us an undertaking that within 12 months of the legislation being proclaimed the commissioner will make available to him, for him to bring back to Parliament, the sort of information that has been referred to? That will allay a lot of problems. After that, if the Committee feels it requires more regular reporting, or if the Minister feels that way, the Government can move an amendment to ensure that happens.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.52 p.m.]: I am prepared to give the undertaking in the form that is being asked, provided it does not increase the cost on the Police Service introducing this material and does not create inflexibility in the reporting arrangements. Subject to those qualifications I have no problem coming back in 12 months time.

**The Hon. RICHARD JONES** [11.52 p.m.]: If we ask questions based on these amendments at estimates hearings, the Minister and the commissioner will be able to answer those questions, will they not? The Minister is not used to what happens, but at estimates hearings questions like that are asked. These questions will be asked at the next estimates and we want to make sure in advance that the questions can be answered.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.53 p.m.]: I have given an undertaking to the Opposition and I will meet that undertaking. As to other matters, they will be dealt with in the normal process.

**The Hon. ALAN CORBETT** [11.53 p.m.]: The Minister has not given any concrete undertaking on anything. He has not specified any of these things, so his undertaking is meaningless.

**Amendments negatived.**

**The Hon. RICHARD JONES** [11.54 p.m.]: I move my amendment No. 3:

No. 3 Page 6, clause 11. Insert after line 15:

- (3) Without limiting the generality of subsection (2), the regulations may require that a record is to be made of:
  - (a) the result of each search that is carried out under this Act (including each occasion where a dog is alerted to the presence of a prohibited drug or plant but nothing is found on the person concerned), and
  - (b) the action taken in respect of any person found to be in possession or control of a prohibited drug or plant, and
  - (c) the overall cost of carrying out general drug detection operations by the use of dogs under this Act, including particulars as to the number of police officers, dogs and other resources involved in those operations and the duration of each operation carried out.

This amendment is similar to the amendments moved by the Hon. Peter Breen except that it allows for more specifics to be put into regulations and it does not put all the information into the legislation. I would have thought that the Minister would have been advised to accept this amendment. If the Minister is unable to accept the amendment, although I hope he will, will he give the Committee an assurance that he will be able to answer questions about these matters that will be asked at the next estimates?

**The Hon. MICHAEL COSTA** (Minister for Police) [11.55 p.m.]: I have given all the assurances I intend to give on these matters.

**The Hon. RICHARD JONES** [11.55 p.m.]: The Minister has not talked about whether he supports the amendment and has not given any reasons why he will or will not support the amendment or whether he has received any advice to support it. Perhaps he could give the Committee the courtesy of a reply.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.55 p.m.]: I have indicated that I do not support any of the amendments before the Committee, including this one, and I have already made my point about the assurances I am prepared to give.

**Amendment negatived.**

**The Hon. ALAN CORBETT** [11.55 p.m.]: With regard to the regulations, clause 11 (2) provides that the regulations may make provision for or with respect to the keeping of records, et cetera. I know this is a common way of writing something, but when the Minister or his department makes up the regulations, he will be writing to the Attorney General and the Attorney General will give a tick to those regulations. Will the Minister specify the sorts of records he has in mind that will be contained within the regulations? I ask this specifically, because clause 13 (2) provides that the Ombudsman may require the Commissioner of Police to provide information about the exercise of those powers. Parliament deserves to have some idea of the sorts of records that will be required under the regulations so that we know what the Ombudsman will be looking for.

**The Hon. MICHAEL COSTA** (Minister for Police) [11.57 p.m.]: The records that will be required under the regulations are the ones that reflect the assurances I have given Parliament and the requirements of the Ombudsman and any other regulatory or oversight body.

**The Hon. RICHARD JONES** [11.57 p.m.]: Will the Minister please get some more advice from his advisers and give us more detail? He is very hazy on the details and surely he can give some more details. I believe those details are coming to the Minister right now. The Minister has been given a sheet of paper with some information on it. Can we please have that information on the record?

**The TEMPORARY CHAIRMAN (The Hon. John Hatzistergos)**: The Committee is debating a clause of the bill. I cannot give the call to the Minister if he does not want the call.

**The Hon. ALAN CORBETT** [11.58 p.m.]: I am sorry to persist with this, but the Minister is not prepared to nail down anything. He is not prepared to give any concrete assurance about these matters at all. Clause 13 (2) provides:

For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those powers.

It is my understanding that the Ombudsman will make a request to the Minister to provide information about the exercise of those powers. Will the Minister give the Committee an assurance that if the Ombudsman makes that request the Minister will reply to the Ombudsman and answer his specific questions?

**The Hon. MICHAEL COSTA** (Minister for Police) [11.58 p.m.]: Again, that is a completely ridiculous question. The clause itself says that I have to.

**The Hon. RICHARD JONES** [11.59 p.m.]: The Minister tells the Committee that he has to do it, but he does not know what he has to do. He has no idea whatsoever. It is time he got some decent advice.

**Part 3 agreed to.**

**Title agreed to.**

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

## **TRANSPORT ADMINISTRATION AMENDMENT (RAIL ACCESS) BILL**

### **In Committee**

**Clauses 1 to 3 agreed to.**

### **Schedule 1**

**Ms LEE RHIANNON** [12.02 a.m.], by leave: I move Greens amendments Nos 1 and 5 in globo:

No. 1 Page 6, schedule 1. Insert after line 12:

(2) The access undertaking or variation must take account of the public interest.

No. 5 Page 6, schedule 1. Insert after line 20:

(3) The notice referred to in subclause (2) (b) must indicate how the proposed undertaking or variation takes account of the public interest.

Greens amendment No. 1 seeks to ensure that the Rail Infrastructure Corporation [RIC] takes account of the public interest in drafting any proposed access undertaking or variation to an access undertaking. Tests for the public interest have been specified in the national competition principles agreement, and include social and environmental impacts and regional development concerns, including employment growth. The arguments about competitive access have largely been based on the aggregate economic benefits without regard to the social, regional or environmental impacts.

To some extent the National Competition Policy recognises these concerns and includes a public interest test. Better outcomes will be achieved by ensuring that the public interest is integrated into the development of an access undertaking from the initial stage, rather than being left until consideration by the Australian Competition and Consumer Commission. That is what we are coming to grips with in these amendments. Amendment No. 5 requires the public notification of proposed access undertakings or variations to include a statement of how the proposal addresses the public interest requirements. Ensuring that the public is informed of these matters would add transparency and public accountability to these important issues, and allow the public better access to the arguments that underpin the RIC's decision making. I commend the amendments to the Committee.

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [12.04 a.m.]: The Government does not support these amendments. It does not make sense to require the Rail Infrastructure Corporation to take account of the public interest. The bill already ensures that the public interest is protected through the roles of the Minister for Transport and the Premier. The undertaking may not be given without their approval. Assessing the public interest is a matter properly left to the Government. It is not a matter for the monopoly infrastructure owner. The Government already advances the public interest in the use of rail through extensive community service payments. These are made both for rail generally and with respect to particular rail uses.

Not only are these amendments unnecessary; it might also be dangerous to impose such an imprecise requirement on the Rail Infrastructure Corporation. The reforms introduced by the Government after the interim report of the Glenbrook inquiry clarified the Rail Infrastructure Corporation's objectives. Its main objective is focused on ensuring the safe and reliable operation of the New South Wales rail network. Its other objectives are secondary to this main objective. The statutory scheme established in response to the Glenbrook accident should not be undermined by imprecise references to the public interest.

**The Hon. JOHN JOBLING** [12.06 a.m.]: I note the questions raised by Ms Lee Rhiannon. The tests for public interest have been specified in the national competition principles, and clearly include social and environmental impacts, regional development concerns and employment growth. That must be weighed against the comments made by the Minister and the Government response to the basis of public interest requirements as they will affect the Rail Infrastructure Corporation. I concur with the specific principal objective of the Rail Infrastructure Corporation—that is, safety. Frankly, safety needs to be the paramount concern in this case. For those reasons the Opposition cannot support Greens amendments Nos 1 and 5.

#### **Amendments negatived.**

**Ms LEE RHIANNON** [12.07 a.m.], by leave: I move Greens amendments Nos 2 and 6 in globo:

No. 2 Page 6, schedule 1. Insert before line 13:

- (2) The access undertaking or variation must safeguard the viability of any rail operator that is a publicly owned corporation.

No. 6 Page 6, schedule 1. Insert before line 21:

- (3) The notice referred to in subclause (2) (b) must indicate how the proposed undertaking or variation safeguards the viability of any rail operator that is a publicly owned corporation.

Private operator access to the rail network can in some circumstances damage the viability of publicly owned rail operators by, for example, cherry picking the least expensive routes or absorbing capacity on important lines. Publicly owned rail operators can and do play a crucial role in delivering services across New South Wales, and thus require some level of protection from private operators seeking to behave in a predatory fashion. It is a basic weakness of the blind application of competition policy that the values of public ownership are neglected.

While governments around the world have taken the soft option of retreating from public provisions, Greens amendment No. 2 challenges the New South Wales Government to forge a new future for publicly owned railways, one in which the values of service and community development are allowed to come to the fore. Amendment No. 6 requires the public notification of proposed access undertakings or variations to include a statement of how the proposal addresses the way in which publicly owned rail operators are safeguarded. I commend the amendments to the Committee.

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [12.10 a.m.]: The Government does not support Greens amendments Nos 2 and 6. The proposal is anticompetitive and surely would not be accepted if it were included in an undertaking submitted to the Australian Competition and Consumer Commission. The amendments could undermine the liability of the Rail Infrastructure Corporation as the owner of rail infrastructure. If the Rail Infrastructure Corporation were required to safeguard the viability of public rail operators through the terms of its undertaking, it would be advancing their interests at the expense of its own. It would cross-subsidise the operations of a non-viable rail operator at the expense of maintaining the New South Wales rail network.

Following the sale of FreightCorp and National Rail Corporation the only New South Wales publicly owned rail operator will be the State Rail Authority. There is no question as to the liability of the State Rail Authority. The Government makes substantial contributions to the State Rail Authority each year. Does this amendment mean that the Greens want New South Wales taxpayers to be subsidising the operations of Queensland Rail at the expense of the New South Wales rail infrastructure? For those reasons the Government will not support either amendment.

**Amendments negatived.**

**Ms LEE RHIANNON** [12.11 a.m.], by leave: I move Greens amendments Nos 3 and 4 in globo:

No. 3 Page 6, schedule 1, line 16. Insert ", and posted on its Internet website," after "public inspection".

No. 4 Page 6, schedule 1. Insert after line 17:

- (b) must cause notice of the proposed undertaking or variation:
    - (i) containing details of the places (including the address of the relevant Internet website) where it can be inspected, and
    - (ii) stating that public submissions may be made in relation to it during that period,
- to be published in a daily newspaper circulating throughout New South Wales, and

These amendments seek to ensure that a proposed access undertaking or variation to an access undertaking is placed on the Rail Infrastructure Corporation's web site and in a daily statewide newspaper. This would make it available for public scrutiny. It is important that the future of our rail industry is the subject of informed public debate from a wide variety of perspectives. Taking these steps would help to ensure that. I commend the amendments to the Committee.

**The Hon. JOHN JOBLING** [12.11 a.m.]: The Opposition sees Greens amendment No. 3 as basically the provision of general information. The Opposition is happy to support the concept of a proposed access undertaking variation being placed on the web site and available for general scrutiny. The Opposition believes it will assist in regard to transparency. I believe the Opposition can support the proposal for advertising in a daily statewide newspaper. I wonder how the daily statewide newspaper might be chosen and the how often such advertising should be placed in various media. Perhaps the Government might care to contemplate that and deal with those issues in its reply. In general terms, the Opposition can see no objection to either of the amendments.

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [12.12 a.m.]: The Government supports Greens amendment No. 3. I understand that the Rail Infrastructure Corporation intends to post any undertaking on its web site. The Government also supports amendment No. 4. I am informed that the Rail Infrastructure Corporation would advertise the availability of the draft undertaking in the ordinary course of events. It would do so by placing an advertisement in a newspaper, probably the *Sydney Morning Herald*. That advertisement would take the usual form of an invitation to make submissions, such as appears for the reviews of Acts and regulations. The amendment does not require anything more than that, and the Government supports it.

**Amendments agreed to.**

**Schedule 1 as amended agreed to.**

**Title agreed to.**

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

**ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (SKI RESORT AREAS) BILL****In Committee****Clauses 1 to 4 agreed to.****Schedule 1**

**The Hon. RICHARD JONES** [12.17 a.m.]: I move my amendment No. 1:

No. 1 Page 3, schedule 1. Insert after line 23:

- (3) An order made for the purposes of the definition of *ski resort area* may identify an area of land for the purposes of this clause only if the area lies within Management Units J2, J3, J4, J6 and J7 specified in the *Kosciuszko National Park Plan of Management 1988* adopted under the *National Parks and Wildlife Act 1974*.

This amendment specifically limits the relevant areas of land that may be defined as ski resort areas to those areas lying within management units J2, J3, J4, J6 and J7 specified in the Kosciuszko National Park Plan of Management 1988. This includes the major ski resort areas of Thredbo, Perisher-Smiggins and Guthega. It also ensures that the day-use-only facilities at Mount Selwyn and other minor areas are not included. The amendment therefore limits application of the bill to current ski resort buildings, rather than anywhere in the park. It is important that ski resort areas managed by Planning New South Wales should not be expanded without an Act of Parliament, as the introduction of such a regime would amount to virtual annexation of national park areas.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.18 a.m.]: The Government does not support the amendment. The bill proposes that ski resort areas be identified and published by order in the *Government Gazette*. The bill requires that any order to define ski resort areas be made only with the concurrence of the Minister for the Environment. The ski resort areas will reflect those identified in the Kosciuszko plan of management.

**The Hon. IAN COHEN** [12.18 a.m.]: On behalf of the Greens, I support the amendment moved by the Hon. Richard Jones. The Greens believe that, given the sensitivity of the area, the areas of dispute over a period of time, and concern about major ski resort developments, it would be appropriate to include this within the legislation. We strongly support the amendment.

**Amendment negatived.**

**The Hon. RICHARD JONES** [12.20 a.m.]: I move my amendment No. 2:

No. 2 Page 5, schedule 1. Insert after line 12:

- (2) Despite any other provision of this Act:
- (a) the Minister is the consent authority for all development applications relating to land within a ski resort area and a regulation made pursuant to this Part can not make a council responsible for exercising any other function referred to in subclause (1), and
  - (b) a regulation may be made pursuant to this Part for or with respect to a ski resort area only on the recommendation of the Minister made after consultation with the Minister for the Environment, and
  - (c) a State environmental planning policy may be made for or with respect to a ski resort area only on the recommendation of the Minister made after consultation with the Minister for the Environment, and
  - (d) any other environmental planning instrument for or with respect to a ski resort area may be made by the Minister only after consultation with the Minister for the Environment.

If the Minister recommends that any such regulation or State environmental planning policy be made, or makes any such other environmental planning instrument, against the advice of the Minister for the Environment, the Minister is to publish the reasons for making the recommendation or instrument in the same Gazette as that in which the regulation, policy or instrument is published.

- (3) When consulting with the Minister about whether a recommendation should be made for the making of a regulation or State environmental planning policy, and about whether any other environmental planning instrument should be made, for or with respect to a ski resort area, the Minister for the Environment must take into account whether the proposed regulation, policy or instrument:
- (a) promotes the objects of the *National Parks and Wildlife Act 1974*, and
  - (b) is consistent with the plan of management under that Act for the land concerned.



This amendment ensures that the Minister is the consent authority for all development applications within a ski resort area and a local council cannot exercise a consent function. It also ensures that consultation with the Minister for the Environment is required for regulations, State environmental planning policies and any other environmental planning instruments made regarding ski resort areas. Before providing any advice the Minister for the Environment must be satisfied that the proposed policy regulation or instrument promotes the objects of the National Parks and Wildlife Act and is consistent with the plan of management for the national park. The Minister must publish in the *Government Gazette* the reasons for making regulations, policies or instruments that go against the advice of the Minister for the Environment. This amendment will therefore ensure that the custodian of natural values has a key voice in the planning framework.

**The TEMPORARY CHAIRMAN (The Hon. John Hatzistergos):** Order! Amendment No. 2 of the Hon. Richard Jones is identical to amendment No. 1 of the Greens except that an additional paragraph is added. If the amendment that the Hon. Richard Jones has moved is carried, I will not put the Greens amendment.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.21 a.m.]: We support the amendment moved by the Hon. Richard Jones.

**The Hon. IAN COHEN** [12.21 a.m.]: Under the circumstances I suppose we should be pleased that the Government supports the amendment moved by the Hon. Richard Jones. The bill removes the planning powers of the National Parks and Wildlife Service. It facilitates the commercial interests of the resort operators such as Kerry Packer. The amendment retains a role for the service in the planning process for the resort areas. It is essential to avoid the handing over of resort planning to the operators. The amendment provides for the service to have its current role. This means that the service must agree to the approval of new development or the making of a new planning instrument. The amendment also specifies that the Minister rather than the local council is the consent authority. I understand that the amendment moved by the Hon. Richard Jones is a somewhat more moderate version of the Greens amendment. Under the circumstances the Greens support the amendment but I would have liked to have moved the Greens amendment.

#### **Amendment agreed to.**

**The TEMPORARY CHAIRMAN:** Order! That amendment having been agreed to, Greens amendment No. 1 cannot be moved.

**The Hon. RICHARD JONES** [12.23 a.m.]: I move my amendment No. 3:

No. 3 Page 5, schedule 1. Insert before line 13:

- (4) Despite any other provision of this Act, development consent must not be granted for development within a ski resort area of any of the following classes without the concurrence of the Minister for the Environment:
  - (a) the expansion of existing, or the provision of new, incinerators or tip sites,
  - (b) the expansion of existing, or the provision of new, sewerage works,
  - (c) significant upgrading, realignment or reconstruction (but not normal maintenance) of roads, or construction of new roads (including management access),
  - (d) the construction of any chairlift, T-bar, J-rope, rope tow or other ski lift,
  - (e) ski-slope grooming works involving cutting or removal (or both) of live trees or shrubs, the blasting of rocks, or the use of earthmoving equipment,
  - (f) any new building,
  - (g) any dam, reservoir or stream diversion.
- (5) Before granting consent to development within a ski resort area, the Minister must:
  - (a) cause a copy of the development application to be served on the National Parks and Wildlife Service and the National Parks and Wildlife Advisory Council and take into account any written submissions made to the Minister by the Director-General of National Parks and Wildlife and that Council within 30 days of service of the copy on that Service or that Council, as the case may require, and
  - (b) cause notice of the proposed development to be publicly exhibited by being published on at least three consecutive days in a newspaper circulating in New South Wales and take into account any written submissions made to the Minister within 30 days after the notice was first so published.

- (6) Before granting concurrence for consent to development within a ski resort area, the Minister for the Environment must consider all environmental impacts of the proposed development and whether it is consistent with the plan of management (under the *National Parks and Wildlife Act 1974*) for the land concerned.
- (7) All development within a ski resort area that is likely to significantly affect the environment and for which consent is required is designated development. The regulations may identify the types of development that are likely to significantly affect the environment.
- (8) A development application relating to land within a ski resort area may be made only by, or with the written agreement of, the Director-General of National Parks and Wildlife.
- (9) Before deciding whether an activity within a ski resort area is likely to significantly affect the environment, the Minister and the Director-General of National Parks and Wildlife are to consult each other and each is to take into account any submission made by the other in that regard.

This amendment will ensure that development consent cannot be granted without concurrence from the Minister for the Environment regarding certain classes of development such as expansion of existing or new incineration or tip sites, sewerage works, new buildings, chairlifts and ski slope grooming. The director-general must ensure public notification and opportunity for comment on all development applications. Before granting concurrence for consent to development the Minister for the Environment must consider all environmental impacts and consistency with plans of management for the national park. All development applications that will now be treated under part 4 will have the same test for whether they need an environmental impact statement, as is presently the case under part 5 of the Environment Protection Authority Act.

The Director-General of National Parks and Wildlife must provide written agreement on development applications. The directors-general of National Parks and Wildlife and the planning department must consult on whether an activity within a ski resort will significantly affect the environment in developing a schedule. This amendment will therefore ensure that developments that may have significant environmental impacts are subject to approval by the Minister for the Environment and that the owner's consent right that all other land holders of New South Wales have is retained wherever a leaseholder submits a development application.

**The Hon. IAN COHEN** [12.24 a.m.]: The Greens support the amendment. We believe it is fundamental for the Minister for the Environment and the National Parks and Wildlife Service to have a significant role in dealing with major issues in the ski fields, in particular dealing with incinerators and tip sites and maintenance of the ski fields and areas and equipment. The Greens believe it is appropriate for the Minister for the Environment still to have input into those matters.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.25 a.m.]: The amendment is not supported. It is contrary to the Walker report recommendation that the Minister for Planning be the consent authority for major developments. The proposal would be unwieldy and time consuming. A development management panel will be established to co-ordinate the assessment of development applications between Planning New South Wales and the National Parks and Wildlife Service. A policy is to be developed which will ensure appropriate public consultation on development applications. The Minister for Planning advises me that the State environmental planning policy [SEPP] and the regional environmental plan [REP] will be consistent with the National Parks and Wildlife Act and the Kosciuszko plan of management. Neither the SEPP nor the REP can take precedence over the National Parks and Wildlife Act.

#### **Amendment negatived.**

**The Hon. IAN COHEN** [12.26 a.m.]: I move Greens amendment No. 2:

No. 2 Page 5, schedule 1. Insert before line 13:

#### **32D Savings of restrictions on development**

- (1) The maximum number of beds allowed in ski resort areas after the commencement of this clause is the total number of beds lawfully being used in those areas before that commencement.
- (2) The maximum number of ski lifts allowed in ski resort areas after the commencement of this clause is the total number of ski lifts lawfully being used in those areas before that commencement.
- (3) The maximum amount of land allowed to be groomed for downhill skiing within ski resort areas after the commencement of this clause is the total amount of land lawfully being groomed for downhill skiing in those areas before that commencement.
- (4) The maximum number of car parking spaces allowed within ski resort areas after the commencement of this clause is the total number of spaces lawfully being used for car parking before that commencement reduced by 5% for the next year on each anniversary of the day of that commencement.

This amendment has the effect of retaining the status quo in relation to the overall level of development in the ski resort areas. It places a cap on the number of beds allowed in the areas. Increases in the amount of on-snow accommodation have a direct impact on the environment that extends far beyond the resort boundaries. The main impact is from sewage spills, which pollute the creeks and rivers of the park. The amendment also caps the number of ski lifts at the current number. New ski lifts would lead to an expansion of resort boundaries into areas of the park that are currently in pristine state.

The amendment also caps the amount of land that can be groomed for skiing. Without the amendment the expansion of groomed areas will lead to additional erosion and damage to the alpine flora and fauna. The amendment also caps the number of parking spaces and provides for the gradual reduction in parking. This amendment recognises that vehicle infrastructure including roads and car parks has a huge impact on the alpine environment. Run-off from roads is a major contributing factor to the pollution of alpine streams. The amendment will not prevent ski resorts from continuing to operate. It is a reasonable amendment that simply challenges the crazy assumption that resort expansion can continue to occur indefinitely in our most sensitive alpine areas. I commend the amendment to the Committee.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.27 a.m.]: The Government does not support the amendment. Decisions on appropriate development levels in the ski resorts are most appropriately dealt with through the State environmental planning policy, the regional environmental plan and the Kosciuszko plan of management.

**Amendment negatived.**

**The Hon. RICHARD JONES** [12.28 a.m.]: I move my amendment No. 4:

No. 4 Page 5, schedule 1. Insert after line 20:

**32E Effect of certain regulations**

To remove any doubt, a regulation made pursuant to this schedule can not have the effect of making any provision prevail over the *National Parks and Wildlife Act 1974*.

This amendment clarifies that a regulation cannot cause any provision to prevail over the National Parks and Wildlife Act.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.28 a.m.]: The Government accepts this amendment.

**Amendment agreed to.**

**The Hon. IAN COHEN** [12.29 a.m.]: I move Greens amendment No. 3:

No. 3 Page 5, schedule 1. Insert after line 20:

**32E State of the environment report**

- (1) The Director-General is to present to the Minister a report as to the state of the environment in each ski resort area on each second anniversary of the day on which this clause commenced.
- (2) Section 428 (2) (c) of the *Local Government Act 1993* applies to the content of a state of the environment report under this clause, except that references in that paragraph to a council are to be read as references to the Department and the National Parks and Wildlife Service.
- (3) Copies of each report must be furnished to such persons and bodies as are prescribed under section 428 (3) of the *Local Government Act 1993*.

This amendment provides for a state of the environment report to be prepared by the director of planning and presented to the Minister. State of the environment reports can be important tools for natural resource management. If decisions are made on the basis of the reports they can lead to behaviour change and environmental improvements. The linking of the state of the environment report with planning decisions can result in better outcomes. However, better information is no guarantee that better decisions will be made. To be effective, reports must be used as more than a catalogue of environmental deterioration. The Government needs

to find some political will. Unless the Government is able to resist the insatiable demands of the ski resort operators such as Kerry Packer the future of the park is on a downhill run.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.29 a.m.]: The Government supports this amendment.

**Amendment agreed to.**

**Schedule 1 as amended agreed to.**

## **Schedule 2**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [12.30 a.m.]: I move:

Page 6, schedule 2. Insert after line 3:

### **[1] Section 151AA**

Insert after section 151A:

#### **151AA Leases of land in Kosciuszko National Park ski resort areas**

- (1) This section applies to land in a ski resort area, within the meaning of Part 8A of schedule 6 to the *Environmental Planning and Assessment Act 1979*, which areas are within Kosciuszko National Park.
- (2) Before granting a lease of land to which this section applies, the Minister:
  - (a) is to refer the proposal to the Council for advice, and
  - (b) is to cause notice of the proposal to be published in a newspaper circulating throughout New South Wales and in a newspaper circulating in the locality in which the land is situated, unless the proposal is required to be advertised by another provision of this Act.
- (3) The notice must contain the following:
  - (a) sufficient information to identify the land concerned,
  - (b) the purposes for which the land and any building or structure on the land are proposed to be used,
  - (c) the term of the proposed lease (taking into account any option to renew),
  - (d) the name of the person to whom the lease is proposed to be granted,
  - (e) the closing date for making submissions on the proposal (being a date not earlier than 28 days after the date on which the notice is first published),
  - (f) the address to which submissions are to be sent,
  - (g) any other information that the Minister considers relevant to consideration of the proposal, for example, identification of the provisions of any relevant plan of management that authorises the proposed purposes for which the land, and any building or structure concerned, are to be used.
- (4) The Minister may hold a public hearing into any proposed lease of land to which this section applies if the Minister thinks it appropriate to do so.
- (5) Before determining whether or not to grant any such lease, the Minister must take into account:
  - (a) any submission received from the Council within 30 days of referral of the proposal to the Council, and
  - (b) any submissions received from anyone else before the notified closing date for submissions under subsection (3), and
  - (c) if relevant, any report from, or submissions received at, a public inquiry.

The purpose of this amendment is simple. It provides for advertising leases of land before they are granted so that they can be the subject of public discussion. The land has to be identified and advertised in a prescribed manner so that submissions from the public can be received. I commend the amendment to the Committee.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.30 a.m.]: The Government supports this amendment.

**Amendment agreed to.**

**The Hon. RICHARD JONES** [12.31 a.m.]: I move my amendment No. 5:

No. 5 Page 6, schedule 2. Insert after line 10:

- (3) An order may not be made under Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979*, or under Chapter 7 of the *Local Government Act 1993*, that would prevent or hinder the Director-General from or in carrying out any power, authority, duty, function or responsibility conferred or imposed on the Director-General by or under this Act.

This amendment clarifies the fact that an order may not be made under division 2A of the Environmental Planning and Assessment Act or chapter 7 of the Local Government Act that would prevent or hinder the director-general from carrying out any power, authority, duty, function or responsibility, conferred or imposed. It is important that any power of the Department of Planning to give an order is restricted in its operation and effect so as not to conflict with the director-general's powers, functions and responsibilities under the National Parks and Wildlife Act that are intended to protect and natural heritage.

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [12.31 a.m.]: The Government does not seek to fetter the Director-General of National Parks and Wildlife, and therefore does not oppose this amendment.

**Amendment agreed to.**

**Schedule 2 as amended agreed to.**

**Title agreed to.**

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

## **DISORDERLY HOUSES AMENDMENT (BROTHELS) BILL**

### **Second Reading**

**The Hon. JOHN HATZISTERGOS**, on behalf of the Hon. Michael Egan [12.33 a.m.]: I move:

That this bill be now read a second time.

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

**Leave granted.**

In 1995, the Government reformed prostitution laws in New South Wales. The Disorderly Houses Act 1943 was amended by the Disorderly Houses Amendment Act 1995 to abolish the common law offence of keeping a brothel. This made brothels a legitimate commercial land use regulated through environmental planning instruments under the Environmental Planning and Assessment Act 1979. At the same time, amendments to the Summary Offences Act 1988 and the Crimes Act 1900 abolished the common law misdemeanour of keeping a common bawdy house or brothel, and provided that people in a legitimate commercial relationship with a sex worker are not guilty of the offence of living off the earnings of prostitution.

These reforms were designed to overcome the effect of the decision of the Court of Appeal in *Sibuse v Shaw* in 1988, which held that a brothel was a disorderly house regardless of whether it was disorderly in the usual meaning of the word. Prior to the Disorderly Houses Amendment Act 1995, police could seek an order to close any premises operating as a brothel. This meant that even orderly, well-run brothels would be closed and prostitutes would be forced back onto the streets. Street prostitution is generally considered to be undesirable. Health and social workers have more difficulty reaching street sex workers with health and safety education programs. Street sex workers are at a greater risk of sexually transmitted infections than those who work in brothels, where some medical supervision exists and where the use of condoms may be enforced.

The Government recognises that it is important to have appropriate regulation of brothels to protect the community from the undesirable aspects of prostitution, to protect public health, and to reduce the potential for corrupt conduct on the part of police. I note that the Wood royal commission uncovered widespread police corruption associated with the operation of brothels. The 1995 reforms to prostitution laws removed this avenue for police corruption. The 1995 reforms allowed brothels to be regulated under the Environmental Planning and Assessment Act 1979 in the same way as any other business. This enables proper control over their impact on communities, through locational and management requirements. Local councils can close a brothel if it does not comply with planning regulations. Councils can also close a brothel if they can demonstrate to the Land and Environment Court that the brothel is having a significant detrimental effect on the local community and that sufficient complaints have been received from nearby residents or occupiers.

In January 2000 the Government established a task force to assess whether the objectives of the 1995 reforms are being achieved through the planning arrangements adopted by local councils; assess the evidentiary requirements for the prosecution and closure

of brothels; and assess the success of occupational health and safety programs for sex workers, their clients and the public. The brothels task force comprised representatives from the Cabinet Office, the Attorney General's Department, the Department of Local Government, the Department of Planning, the Ministry for Police, WorkCover, New South Wales Health, the Police Service, and the Local Government and Shires Associations. The task force representatives consulted with local government, sex workers, and social and health workers about the implementation of the reforms. The task force concluded that the objectives of the 1995 reforms are still relevant and appropriate, and did not recommend any changes to existing policy. However, the objectives of the reforms are not being achieved to the extent that was envisaged. This is not due to deficiencies in the approach taken in the legislation. The task force has recommended that the difficulties that local councils face in dealing with brothels may be addressed by improving their understanding of the law relating to brothels and by helping them to optimise the use of those laws.

In bringing enforcement action in the Land and Environment Court to close or restrain the use of premises as brothels, councils have experienced difficulties in establishing that premises are operating as brothels. This bill is designed to clarify the nature of evidence that a local council may present to the court and that the court may rely on to establish that premises are operating as a brothel. The bill amends the Disorderly Houses Act 1943 to make it clear that the Land and Environment Court can rely on circumstantial evidence to establish that premises are operating as a brothel. Often, direct evidence that premises are operating as a brothel is not available to councils. The bill lists examples of relevant circumstantial evidence that is consistent with the use of premises for prostitution. Considered together, the circumstantial evidence may establish facts from which the court may conclude, as the only rational inference, that the premises are used for the purposes of prostitution. This will assist local councils in proceedings before the Land and Environment Court on an application under the Disorderly Houses Act for premises not to be used as a brothel, or under the Environmental Planning and Assessment Act to restrain the use of premises as a brothel.

This bill is proposed as part of a package of ongoing measures to address the issues identified by the brothels task force. The Government will also be establishing a brothels planning advisory service to provide ongoing assistance to local councils. This support will be provided by a panel, with representatives from state and local government, the sex industry, and someone with expertise in legal issues associated with planning for brothels. This panel will raise awareness in councils of the law relating to brothels. It will assist local councils in developing appropriate planning controls for brothels that identify areas where brothels are compatible with other land uses and which protect the community from amenity impacts. It will also assist councils in developing planning controls which could be easier to enforce. In terms of public health, the task force concluded that the 1995 reforms have had a positive impact on access by sex workers to health services and occupational health and safety programs. The Government proposes to continue these programs.

The Government has received strong support from the Local Government and Shires Associations for the proposed bill and advisory service. The associations were members of the task force and their participation was much appreciated. However, the associations have suggested that the Government set up a licensing system for brothels, similar to the Liquor Licensing Court. The associations propose that the licensing body be responsible for non-planning issues, such as health and criminal matters, leaving local councils to deal with planning issues. The Government does not support this proposal. Similar licensing schemes in other States have not worked. Sex workers avoid licensing to protect their privacy. Unlicensed workers are less likely to participate in occupational health and safety programs, and this has impacts on public health. Unlicensed workers would also be vulnerable to corrupt conduct on the part of licensing authorities. Other proposals for legislative amendment to the regulation of brothels have also been made. The Opposition, for example, has proposed to give local councils powers to issue and enforce orders to close illegal brothels without the person who is the subject of the order having a right to appeal to the Land and Environment Court.

The 1995 reforms were designed to protect public health and minimise opportunities for corruption. The Government is concerned that some of the proposals to change the regulation of brothels will create new opportunities for corruption and impose a regime that will increase the number of sex workers who are operating illegally. The bill, together with the proposed advisory service, will improve the regulation of brothels. I commend the bill to the House.

**The Hon. DON HARWIN** [12.34 a.m.]: Prostitution in this city and in this State is as old as the colony itself. It is well known that the colonial authorities officially sanctioned prostitution to avoid what they regarded as even greater vices. John Birmingham, author of the book *Leviathan: the unauthorised biography of Sydney*, described the position of women in the colony as follows:

The women's role was explicit. Their presence was required to stymie any out break of 'perversion' amongst the salty, long deprived men of the fleet. This conception of female immigration as a sort of sexual safety valve still held fast decades later when officers and enlisted men were allowed to take female 'servants', a quaint euphemism exposed by T. W. Plummer who wrote to Governor Macquarie in 1811 that officers, non-commissioned officers were all taking the female convicts 'not only as servants but as avowed objects of intercourse rendering the whole colony little less than an extensive brothel.'

The notoriety of prostitution in Sydney continued into the twentieth century, leading to the Wade Government trying to crack down on prostitution through the Criminal Offences Bill in 1908. But by targeting individual prostitutes who worked the streets, prostitution was transformed into an industry based in brothels. I have talked about Larry Writer's book *Razor* in this House before. That book records that transformation and the rise of syndicated criminal gangs taking over prostitution in the East Sydney/Darlinghurst area. Tilly Devine's gang ran a string of brothels based in Palmer Street, where prostitutes were virtually indentured by virtue of their cocaine habit, which was carefully nurtured by the exploitative Devine and her enforcers. While there were efforts to crush the trade in the 1930s, the Second World War led again to a further period of unofficial sanction, as Birmingham records:

The area around Palmer Street, East Sydney, informally zoned for brothel-keeping by tacit consensus of police, public and government, soon exhibited a fantastic scene of industrial-age whoring. Hundreds of US servicemen queued outside hastily organised establishments with [military police] detailed to keep lines moving, and special clubs for Negro soldiers.

David Hickie in *The Prince and the Premier* records how Prime Minister John Curtin had one of his aides make discreet inquiries of operators of criminal rackets in Sydney, seeking their assistance to establish a more virile vice trade in Brisbane to meet the needs of servicemen in that city. The Sydney prostitutes were given a retainer and were provided with a special train with special clearances to expeditiously transport them from Sydney to Brisbane by the Curtin Government, in the interests of the war effort. After the war, under successive State Governments, illegal prostitution continued to flourish with seeming impunity under police protection. Brothels openly operated in the Palmer Street area and were only rarely prosecuted when someone forgot to pay off someone else.

One case came to light in early 1965 by accident when the madam, Aileen Donaldson, was being sued in the Bankruptcy Court and she was caught trying to conceal her interest in a Palmer Street brothel. Her silent partner was revealed as Detective-Sergeant Harry Giles, head of the Darlinghurst Vice Squad. One notorious criminal, Joe Borg, had 14 brothels in Liverpool Street, Liverpool Lane, Woods Lane and Chapel Street. Along with Palmer Street, Palmer Lane and Berwick Lane, the whole precinct was nicknamed the "doors" area, with prostitutes advertising what was on offer, so to speak, from the front sitting room, visible through an open door.

As a Darlinghurst resident from 1992 until 1999 who owned a terrace in that notorious "doors" area, it was hard to miss what is now often referred to as the sex industry still in action in that area. To this day, an illegal brothel trades in Liverpool Street. Street prostitution, both male and female, is still quite visible. When I lived in Forbes Street, there was considerable activity in the street, involving mainly women and girls who were tragically addicted to intravenous drug use. Of course, when the Horizon building was completed, the police moved the girls on to keep happy some of the new residents with loud and influential voices and connections to the Carr Government.

Those women and girls are now in Bourke Street. I invite honourable members to read the comments of the honourable member for Bligh in another place with respect to this legislation to learn about the ongoing problems. Hypocrisy has characterised so much of the debate about prostitution over the years, in part because it has inevitably been caught up in morality debates. Many people in our community charge prostitution as a moral evil, as is their right, but Parliament needs to make workable laws that protect the community's wider interests but recognise the inevitability of an ongoing sex industry—as it is now often referred to—and protect those who work in that industry. One of the challenges in finding the appropriate balance is to recognise the diversity of the industry.

At one end of the spectrum, mainly women work in illegal brothels exploited by operators in ways not so different from those employed by Tilly Devine and others in the 1920s. This House has only just passed legislation relating to the very real problem of sexual servitude in which mainly South-East Asian women in Sydney who are illegal migrants are virtually enslaved by unscrupulous operators using the threat of arrest and deportation. At the other end of the spectrum, men and women have made conscious choices to work in well-kept and legal brothels, valuing the financial rewards and providing a safe, well-ordered service. Many people work from home, with the assistance of a mobile phone and a classified advertisement in the local newspaper. They are meeting an undeniable demand. In speaking on this legislation, I make no moral judgments about those who follow this profession.

It is my view that it is essential that we not go back to looking at the sex industry through the prism of the criminal law. A regulated industry which allows brothels to operate with development consent from local government, in a compatible environment with the assent of local communities, is the best model. A safe workplace is the right of those working in the industry and an insistence on safe sex practices amongst workers and their clients is in the interests of a healthy community generally. Public policy and legislation must have those objectives. The 1995 amendments to the Disorderly Houses Act went some way towards meeting these objectives. Prior to this legislation, all brothels were considered to be disorderly houses and could be closed down. The 1995 amendments, passed with the Opposition's support, made brothels a legitimate commercial land use that could be regulated by local government under the Environmental Planning and Assessment Act.

The Disorderly Houses Act continued to provide local councils with a remedy against illegal brothels where a detrimental effect on the local community could be proved. Some time ago the Government established a brothels task force to monitor the new legislative arrangements comprising representatives from the Cabinet Office, the Attorney General's Department, the Department of Local Government, the Department of Urban Affairs and Planning, the Ministry of Police, New South Wales Health, the Police Service, and the Local Government and Shires Associations. They issued a report in October 2001, and I thank the Attorney General's office for providing me with a copy of it.

The terms of reference of the task force covered the application of planning controls to brothels, evidentiary requirements, and occupational health and safety issues. The report records that about half of the local councils in New South Wales have prepared local environmental plans that identify locations where brothels may legally operate. The most comprehensive example of the response of local government is the controversial sex industry policy of South Sydney City Council, which effectively licences home business brothels in residential and other zones without even obtaining development consent. The report estimates that 40 per cent of all prostitution takes place in residential areas in small home occupation brothels. Most operate without development consent except in council areas following the South Sydney model—another example is Marrickville.

The report notes that it would be possible through an amendment to State environmental planning policy [SEPP] 4 for the Carr Government to allow home occupation brothels to operate without development consent across the State, similar to the regulation of other home-based businesses. Frankly, I think that the second section of the report, which focuses on the regulation of brothels, is weak and does not display any comprehension of the degree of difficulty that local government is having with the problem of illegal brothels. Most councils do not believe that they have adequate support to close down illegal brothels. A particular problem is the time lag, with some councils waiting up to 18 months for court orders against illegal brothels to come into effect. No wonder they are proliferating. Councils are also spending considerable sums of money attempting to shut illegal brothels.

Research conducted in June by my colleague the honourable member for Pittwater, the shadow Minister for Planning, showed that in the Sutherland Shire Council area there were 10 known illegal brothels, with \$59,200 spent in legal costs over the past 3½ years to close them down; in the Rockdale City Council area there was one known illegal brothel, with \$88,000 spent closing down five illegal brothels; in the Burwood Council area there were several illegally operating brothels, with \$66,750 spent closing down 12 illegal brothels since 1995; and in the Parramatta City Council area there were nine known illegal brothels operating. That council estimates that the minimum cost to ratepayers in closing an illegal brothel is \$2,550, and one particular case cost more than \$50,000. In the Liverpool City Council area four known illegal brothels were operating illegally. That council advised that the cost of inspecting a suspected illegal brothel is \$500.

Some councils have had to go to ridiculous lengths to prove that brothels are operating illegally, including hiring private investigators to enter illegal brothels and hiring prostitutes. The task force's report has only one solution to the problem: seeking to clarify the existing legislative provisions relating to the evidentiary burden, and this legislation, which provides for the admission of circumstantial evidence in proceedings before the Land and Environment Court, for the purpose of proving that certain premises are being used illegally as brothels. Notes appended to the bill give examples of the types of circumstantial evidence that the Land and Environment Court may consider in determining whether premises are being used as an illegal brothel.

Any legislative change that facilitates the closure of illegally operating brothels is to be welcomed. However, it must be said that the bill does not go nearly as far as the Opposition's proposed Community Protection (Illegal Brothels) Bill 2001—which stands in my name on the notice paper of this House and in the name of the honourable member for Pittwater on the notice paper of the other place. The bill presently being debated will only ease the evidentiary burden on local councils in actions before the Land and Environment Court. It will not stop this from being a lengthy and costly process. Ratepayers could be forgiven for believing that their rate dollars could be better spent. They should have a right to speedy relief from the loss of amenity and public safety which results from the operation of illegal brothels near their homes, schools and churches.

Under the Coalition's proposed legislation councils would be given the power to serve notice on the owners or operators of suspected illegal brothels, requiring that they demonstrate within 48 hours that their premises are not being used for that purpose. Failure to comply with such a request would result in closure of the premises by council officers, using whatever reasonable means necessary, including police assistance. A large number of local councils have expressed their support for the Opposition's foreshadowed Community Protection (Illegal Brothels) Bill. Mark Pigram, the Mayor of the City of Holroyd, complained of the expense and delays involved in shutting down illegal brothels. He said:

Council agrees that local government should have more effective means of dealing with illegal brothels in a cost-effective manner. Accordingly, my Council supports the thrust and objectives of the Bill.

The Mayor of Pittwater, Patricia Giles, also praised the Coalition's initiative. She said:

The proposed bill and the authority it will confer on Council to act to preserve the community amenity is considered to be of considerable value. I am pleased to offer Council's support for this bill and to commend the form and content of the proposed legislation.



It is not only city councils that have problems with illegal brothels. Tamworth City Council wrote to my colleague the shadow Minister in another place in the following terms:

The move to enable local government sufficient powers to close the operations of an illegal brothel is supported by Tamworth City Council. Tamworth City Council has faced numerous, lengthy and costly proceedings to close such activities only to find that the proponents cease trade immediately before any order expires and open in new or different premises, leaving Council to recommence proceedings on a new site.

Other councils that have expressed their support for our bill include Berrigan Shire Council, Gunnedah Shire Council, Sutherland Shire Council, Grafton City Council, Cooma-Monaro Shire Council, Wyong Shire Council, Gilgandra Shire Council, Narrabri Shire Council, Inverell Shire Council, Lismore City Council, Gosford City Council, Tenterfield Shire Council and the Council of the Shire of Hornsby. The Coalition has consulted widely and received considerable support for its bill: the Community Protection (Illegal Brothels) Bill. The Government's bill is a poor substitute; indeed, it has engendered some opposition, although much of it unfounded.

Honourable members have received many emails from concerned health industry professionals and sex workers, and this has caused understandable concern. The AIDS Council of New South Wales [ACON] has written to the Premier, and copies of its letter have been sent to the Opposition. The council's letter raises two principal concerns. The first is that the clarification of the evidentiary burden will enable councils to use safe sex equipment and literature as circumstantial evidence in a prosecution under the Disorderly Houses Act. On behalf of my Opposition colleagues, a number of whom have expressed concerns, I raised this issue with the Attorney General in a letter dated 11 December.

New South Wales has an enviable record in HIV-AIDS prevention, and it would be a pity if that record were jeopardised. I am sure many members of this House share that view. I have received a verbal assurance from the Attorney's policy adviser that the Opposition's concerns are perhaps not as serious as has been represented. However, as this issue will, I suspect, be extensively canvassed in Committee, I will say no more about it at the moment. I note that the Greens have circulated amendments that deal directly with that matter. ACON's second concern seems to be the future of home-based sex workers in home occupation brothels. Its letter reads:

Sex workers currently working from their homes unnoticed by residents, may be forced into working outside their homes, increasing health risks as well as disruption to local residents.

It seems that ACON assumes that home occupation brothels will be easier to shut and that this will force sex workers "underground". As a result of the bill, it may ultimately be easier to shut home occupation brothels that do not have development approval, just as it may be possible to shut all brothels that do not have development approval. However, the Opposition believes that the effect of the legislation will be, at best, marginal. The question, then, is whether one supports an approach based upon local councils, elected by their local communities, being empowered to decide the character of the suburbs and towns and the compatibility of land uses. Under this approach, councils have the right to regulate land use in their areas, including where brothels can operate. This issue will also be canvassed extensively in Committee, and I will say more about it then.

Nothing in this bill will alter the ability of councils such as South Sydney City Council to permit home occupation brothels. Those who have concerns need to think of creative solutions to the problem of convincing councils to adopt such policies. If they do not think this is possible, I repeat that the Carr Government can address this through SEPP 4 without any amendment to the legislation. In some respects, a planning instrument is a much more flexible instrument, and it is likely to be a more responsive solution than legislation. The Opposition will not oppose the bill. Our policy is clear. We believe that local government is the appropriate avenue for regulating an industry that has been around forever and is clearly here to stay. We believe that regulation must be reasonable, but also responsive, to the aspirations of local communities. Our commitment to the national strategies that deal with HIV-AIDS prevention is well known. We believe that the Coalition's Community Protection (Illegal Brothels) Bill is an even more effective solution to the problems of illegal brothels than the Government's Disorderly Houses Amendment (Brothels) Bill.

**The Hon. IAN COHEN** [12.54 a.m.]: The Greens oppose the Disorderly Houses Amendment (Brothels) Bill in its present form and will move amendments in Committee. As the Hon. Don Harwin said, New South Wales has an enviable record in HIV-AIDS prevention, and it would be a great shame if Australia's position in the international community, of which it is very proud, were lost by virtue of restrictive legislation that makes it difficult for certain elements of the industry to operate in an appropriate and hassle-free environment. At the outset I point out that the Greens support appropriate language when referring to sex

workers and the services they provide. This counters prejudice and contempt, and reduces stigmatisation of sex workers. The appropriate term to describe a provider of sexual services is "sex worker", not "prostitute". The Greens support full legalisation of the sex industry. We believe that sex workers should have the same rights as any other workers: the right to join a union, the right to pay tax, the right to make superannuation contributions, the right to holiday and maternity pay, and access to workers compensation if injured.

The Greens oppose the bill for two main reasons. First, it will impact in a negative way on private home-based sex workers; and, second, aspects of the bill will seriously undermine harm minimisation measures achieved through the introduction of the 1995 amendments to the Disorderly Houses Act. The bill has major impacts on public health initiatives, human rights, women's rights, tax compliance, and occupational health and safety in relation to sex workers and their clients. It fundamentally undermines all global HIV-AIDS policies and is counter to the objectives outlined in the 2001 United Nations Declaration of Commitment on HIV-AIDS, entitled "Global Crisis—Global Action", which specifies:

By 2003, enact, strengthen or enforce as appropriate legislation, regulations and other measures to eliminate all forms of discrimination against, and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS and members of vulnerable groups; in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support, treatment, information and legal protection, while respecting their privacy and confidentiality, and develop strategies to combat stigma and social exclusion connected with the epidemic.

Sex workers fit into the vulnerable groups category due to their livelihood. The Disorderly Houses Amendment Act was introduced in 1995 to address public health concerns of clients and workers in the sex industry and to combat corruption. The system of regulation intended under the Disorderly Houses Amendment Act was outlined by the then Attorney General and reiterated clearly by a number of Government backbenchers. When looking at the bill it is useful to revisit the rationale and intent behind the amending 1995 Disorderly Houses Amendment Act. The then Attorney General, Jeff Shaw, specified:

It is not the intention of the bill that brothels be permitted to operate unregulated. To this end, it also provides an avenue for the community to make complaints to local councils where a brothel is having a significant detrimental effect on the neighbourhood. Councils are empowered under these provisions, to apply to the Land and Environment Court to have a brothel closed down.

Neither is it our intention, with the introduction of these provisions, to limit those applications appropriately based on planning controls vested under the Environmental Planning and Assessment Act 1979. The only change to existing law affected by this proposal is to the basis for, and the jurisdiction of, applications under the Disorderly Houses Act to close a brothel which is not otherwise disorderly.

The Hon. Meredith Burgmann said in her speech:

The Disorderly Houses Amendment Bill is about decriminalisation, not legalisation. Brothels do not have to seek approval to operate. The only system of regulation is the right of councils to go to the Land and Environment Court to have a brothel closed if there are sufficient residential complaints. The bill clearly states who has the right to complain and what criteria the Land and Environment Court has to consider when deciding on an application to close a brothel. Broadly, this criteria includes whether a brothel is operating near or within view from a church, hospital or school, or any place regularly frequented by children for recreational or cultural activities, and whether the brothel is disturbing the neighbourhood.

This is a very important part of the legislation. It allows people in the residential neighbourhood to complain if a brothel is causing problems in relation to noise, parking or sanitation. It does not allow the busybody groups who believe that prostitution should be illegal to take a case to close down a brothel. It is clear who has the right to object in any circumstances: residents in the area can complain to their local council about noise, sanitation and parking. The bill implies only small changes, but they will eliminate opportunities for corruption. In addition, the proposed system of relying on residents' complaints is a simple and inexpensive one.

The central aim of the 1995 reforms was to ensure that brothels are located in areas where they are compatible with other land uses. Clearly, the intent of the legislation was to enable a brothel to be closed down only if it impacts on the amenity of the area and when sufficient complaints from residents within the vicinity of the brothel are established. Low amenity impact businesses could operate within residential areas without development consent. However, there have been a number of developments since this legislation which have undermined its original intent. I will refer to those later. I will deal first with the issues faced by private home-based sex workers, who operate in a very different work environment from sex workers employed in larger brothels.

Facts supplied by the Private Worker Alliance and the Sex Workers Outreach Project specify the following about the sex workers. Most have worked previously in brothels and other jobs prior to becoming independent sex workers. Most are older workers in their 30s, 40s and 50s. Most are highly skilled and experienced. The majority of male sex workers operate as private workers. Intravenous drug use in the private

worker sector is low. The anonymity of private sex workers and their ability to control all aspects of their business and services delivered are key components of their security and health strategies. Clients are seen on an appointment-only basis. All services are negotiated directly; there is no third party involved. Both the client and the worker are on an equal footing in regard to requiring confidentiality. Home-based workers may not disclose their occupation to anyone. For safety reasons some home-based workers choose to team up with another worker. Condom use is very high and the sexually transmitted disease rate is low. The premises need not be known as a sex industry location in order to be successful. They operate with no or low amenity impact for residents and neighbouring businesses. Unlike brothels, which rely on high turnover and volume, private workers offer more personal attention and often have a high proportion of regular clients.

**The Hon. Doug Moppett:** You have been taken in by the advertising hype.

**The Hon. IAN COHEN:** I do not think it is advertising hype. These sorts of industries do not advertise at all.

**The Hon. Doug Moppett:** You are talking about extra services. You are giving them a good wrap-up.

**The Hon. IAN COHEN:** I think they deserve it, actually.

**The Hon. Doug Moppett:** I couldn't offer an opinion.

**The Hon. IAN COHEN:** Sex workers generally in these discreet businesses offer a service that has minimum impact on the rest of society but, in many cases—and I will come to this shortly—it is a very valuable service in the community, particularly to people with disabilities and people in society who would find it difficult to cope without this sort of assistance. They are like front-line social workers in many ways, and that needs to be acknowledged.

**The Hon. Doug Moppett:** That is remarkable.

**The Hon. IAN COHEN:** It is an observation. Businesses may be conducted on a part-time, occasional or full-time basis. They represent up to 40 per cent of sex industry businesses in New South Wales. In a letter to Dr Refshauge, the Minister for Planning, dated 23 May 2001 the Private Worker Alliance raised the original implications of the 1995 Act in the following terms:

In 1995 a small group of Private Workers represented the interests of Private Workers to the Attorney General's Department in the consultations leading up to the Disorderly Houses Amendment Bill 1995. Then we were assured that nothing contained in the Bill would affect the way we work, discreetly in pairs from a residential dwelling in a residential area. Next thing we knew, we were classed as a brothel and in some instances required to apply for a DA and or work in industrial areas.

The appalling situation private sex workers find themselves in since 1995, is due to the inclusion of private workers in the definition of a brothel in the Disorderly Houses Amendment Bill of 1995, and the additional powers given to councils to prohibit brothels in residential areas in 1996.

During the past two years, the Private Workers Alliance has consulted with Councils, resident groups, the LGSA, the Health Department and the Taskforce. It is generally understood that private workers are not an issue with regards to amenity impact.

The recent Brothels Taskforce noted:

Local councils have adopted a range of planning controls for home based brothels. Many councils prohibit all brothels in residential zones. Others allow home based brothels without development consent if they are operated by one resident sex worker (as a "home occupation"); and allow them with development consent if they are operated by a maximum of two non-resident sex workers (as a "local business").

Prohibiting private workers in home-based businesses in residential areas does not result in private sex workers moving from their homes and relocating to areas where brothels are permissible. Instead, workers are forced underground. Sex workers in private worker home-based businesses do not seek development consent; to do so would reveal their identity and location. They are then often subjected to various forms of abuse, violence and vilification. The identification of individual sex workers through the development application process is contrary to the recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS, the policies of the Australian Federation of AIDS Organisations and the AIDS Council of New South Wales. Such requirements are also counter to the United Nations Declaration of Commitment on HIV-AIDS 2001.

Requiring development consent for private worker home-based businesses also reduces access to health and safety programs. Most other low amenity impact-causing home-based businesses located in residential

mixed-use and other zones currently operate statewide without requirements for development consent. It was interesting that the recent controversial legislation that passed through the House dealing with planning laws exempted small developments from the consent process of council, yet this industry has been discriminated against. In the interests of the health of sex workers, their clients and families the Greens support ensuring that private home-based workers are appropriately regulated in order to achieve a supportive environment for optimum health and safety standards in the provision of their services.

Street work, the other independent option for workers in this industry, must not be the only option for women who want to work illegitimately, independently, away from a big brothel and without a middle person. Currently, the Disorderly Houses Act defines that a "premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution". Therefore, amendments to the Act will include home-based operations. Brothels are not only regulated by the Disorderly Houses Act but also the planning system, in particular, the Environmental Planning and Assessment Act. Those who want to operate a brothel have to put in a development application to their local council to obtain development consent to operate such a brothel. The question is: Should home-based businesses be treated equitably with other home-based businesses and should those that are of minimal impact be allowed to operate illegitimately without consent?

If one compares private home-based sex workers with other home-based businesses in New South Wales, one sees that it is glaringly apparent that sex workers are discriminated against. Generally, home-based businesses in New South Wales are permitted and are highly unregulated. This is in sharp contrast to home-based sex workers. Discrimination occurs through the Disorderly Houses Act and the planning system. As mentioned before, the Act classifies even a one sex-worker operation as a brothel. Therefore, private worker home-based businesses are not regulated equitably with other comparable land users such as masseurs and architects. Further, the 1996 Department of Urban Affairs and Planning ministerial directive allows councils to prohibit brothels in all zones except industrial zones, ignores the needs of home-based sex workers and has reduced the ability of this kind of home-based business to operate in residential areas where most other home-based businesses are. Planning instruments such as State environmental planning policies, State regional environmental policies, local environmental policies, development control plans and council policies all discriminate against sex workers in home businesses, either through prohibiting brothels as home-based businesses or home occupations, prohibiting them in residential areas, where they naturally are, or singling them out to apply for development consent, restricting the number of operators and prohibiting them from advertising in certain papers.

Unlike other minimal environmental impact-causing home occupations, private home-based operations are not treated as exempt development. This discrimination exists despite the many commonalities between private worker home-based operations and other home-based businesses. The Greens believe that a maximum of two workers operating from home should be exempt from the need to obtain development consent. We believe that workers should be allowed to work anonymously, in pairs, in all appropriate zones, including residential zones. South Sydney Council has gone part of the way down this path. In a letter dated 31 October 2001 addressed to the Private Worker Alliance, the council explains the policy in detail:

I refer to your query concerning South Sydney City Council's Sex Industry Policy and its provisions for Private Worker Home Based Businesses (PWHBBs). The policy was drafted to ensure that such premises do not require the consent of the Council, as is the case for all other home businesses.

In respect of the PWHBBs not requiring development consent, the policy reiterates the provisions of South Sydney LEP 1998 and indeed this exemption has been the case since the City of Sydney Planning Scheme Ordinance of 1971.

However, Council's Exempt and Complying Development LEP and DCP... further restricts such premises to only one resident sex worker, and the working room or area must not occupy more than 10 per cent of the floor area of that part of the storey containing the dwelling... Where the home business changes the classification of the building, a DA is required.

There exist many PWHBBs operating in South Sydney, and this has indeed been the case for many years. Intuitively, the great majority of these businesses are intentionally discreet by nature, with anonymity being one necessary part of the continuation.

It is considered that those that cause disturbance or amenity impacts will quickly come to the attention of neighbours and, soon thereafter, Council. If upon investigation it is determined that there are tangible amenity impacts, the premises will fall outside the definition of a home business, and would require development consent. By definition, such premises may not interrupt residents' amenity. Where Council verifies such complaints upon inspection, then the matter may be pursued legally.

That is, local residents and councils have all manner of opportunities to deal with workplaces that cause nuisance to the public or local residents. So already there is sufficient legal recourse for those who wish to complain in a legitimate way. There does not need to be strengthening of that provision by the bill. The letter continues:

The alternative of prohibiting home business private sex workers is likely to result in the further marginalisation, intimidation and coercion of this minority group in our community (as has been the case in the past).

To maximise the potential for compliance with the law, and to optimise public health and safety, the Greens would like to go one step further and support the original South Sydney Council policy for private workers. Between 1997 and 2000 the South Sydney Council allowed a maximum of two sex workers to operate from a residential premise at any one time. During this time the council received no complaint against those discreet home-based businesses. Why is it preferable to allow two workers to operate rather than one?

**The Hon. Doug Moppett:** Economies of scale.

**The Hon. IAN COHEN:** Safety and lack of abuse are perhaps the relevant issues for those working in an industry that is very vulnerable. Isolating private workers from each other has negative health and safety consequences. There must always be the opportunity for a newer worker to team up with someone who has more experience. Two workers operating together are in a much better position to circumvent any difficult situations that may arise. This is the minimum health and safety requirement. The Attorney General in Parliament on 29 November 2001, on advice from the health department, commented that "prostitutes working in brothels are more strictly supervised with medical checks and condom use than street prostitutes." That makes the assumption that the excellent health and safety record of New South Wales sex workers is based on enforcement by brothel owners.

**Reverend the Hon. Fred Nile:** They are often forced not to use condoms.

**The Hon. IAN COHEN:** I am surprised that in this debate I am agreeing with Reverend the Hon. Fred Nile, but I have heard time and time again of women in those types of institutions being forced to have unsafe sex. In that type of institution there is more pressure on the workers to provide that type of service.

**The Hon. Dr Brian Pezzutti:** It is even worse for the man—only because the risk is much higher.

**The Hon. IAN COHEN:** I dispute that. I think men who insist on unsafe sex place the women in the industry at great risk of sexually transmitted diseases. But I agree with Reverend the Hon. Fred Nile about vulnerability to risk of sex workers. I am told that sex workers operating from private premises not only have more independence; they also have more control over their clients. They tend to have more regular customers, and that provides far more safety for the women involved.

**The Hon. Elaine Nile:** Sometimes they knock on the wrong doors.

**The Hon. IAN COHEN:** I acknowledge the interjection of the Hon. Elaine Nile. However, present laws and council regulations clearly cover circumstances in which brothel operations cause nuisance to neighbours. Neighbours have recourse under current laws. That in itself is not a reason to ban home-based sex worker activities. If noise or other problems such as that mentioned by the Hon. Elaine Nile are caused to neighbours, those problems can already be dealt with by authorities under local government bylaws.

**The Hon. Elaine Nile:** If they are in a unit, it is very difficult to deal with them.

**The Hon. IAN COHEN:** I visit my parents in a multiple-unit block that is eight storeys high. People come and go from those units and one would not know whether they were family members, sex workers or young people on holidays.

**The Hon. Duncan Gay:** I visit every council in this State, and that is the biggest single complaint.

**The Hon. IAN COHEN:** Surely that can be remedied under the existing laws.

**The Hon. Duncan Gay:** No, it cannot, and that is the problem. That is why this legislation is before this Chamber. It is a pity that the Government did not use John Brogden's bill.

**The Hon. IAN COHEN:** We would disagree with that. The assumption that brothel owners have a greater interest in protecting sex workers and the public health than sex workers themselves is erroneous and patronises sex workers. A paper published by M. Neave entitled "The Failure of Prostitution Law Reform" in the *Australian and New Zealand Journal of Criminology* of 1988, pointed out:

Women who work in a co-operative situation with another woman, or in small brothels, have greater ability to control the conditions under which they provide sexual services. They are more likely to be able to refuse drunken or diseased clients, refuse particular kinds of sexual services, or insist on the use of condoms, than women working in very large brothels, controlled by business men seeking to maximise their profits.

A policy which discourages or even prohibits the establishment of large brothels and moves the industry towards small-scale or 'cottage industry' prostitution would give those who work as prostitutes a greater degree of practical ability to protect themselves against abuse and corruption.

The Women's Electoral Lobby also argues that prostitutes have a clear incentive to protect their sexual health and are not major transmitters of diseases. They are, however, at risk. There is evidence that in some large brothels the client's refusal to use a condom is backed by management. The Greens point out that the New South Wales HIV-AIDS prevention strategy has been uniquely successful because it is based entirely on voluntary compliance and peer-based education.

In summary, sex workers in home-based businesses should have the opportunity to work in small collective teams. Prohibiting private workers to work anonymously in pairs from their homes in all suitable zones, including all residential zones, endangers the health, safety, confidentiality and privacy of sex workers, clients and families. I am also advised that, in terms of business services, "doubles" are very popular. Not allowing this to occur in a home-based situation is an unfair restraint on trade. The Greens believe that the South Sydney Council policy with the Greens amendment of allowing a maximum of two workers should be enshrined in a SEPP. Currently, councils adopt a range of planning controls for private worker home-based businesses. Many councils simply prohibit brothels in residential zones and as home occupations. A new SEPP would ensure that all councils allow this kind of low-impact operation to occur without development consent. A recent report of a ministerial task force on brothels made a finding on this issue. At page it 13 states:

An amendment to SEPP 4 development without consent and miscellaneous complying development could be made to allow home-based brothels without development consents across the State. This would make the regulation of home-based brothels similar to the regulation of other home occupations. Home-based brothels regulated in this manner could still be closed by local councils if they had an adverse impact on the amenity of the neighbourhood.

The Disorderly Houses Act should also be amended so that the definition of brothel is "premises constitute a brothel only if they are used by more than two prostitutes for the purpose of prostitution". I now turn to the negative impact the bill will have on harm minimisation measures. It is worth revisiting the Premier's answer to a question on the legislation when it was first passed. On 16 November 1995 he said:

With the decriminalisation of brothels, I expect that health and safe sex education programs in these premises can be expanded and improved. The new ... legislation can result in significant health benefits, particularly to the health of sex workers ...

The legislation removes the remaining legal impediments and stigmatisation that in the past have impeded health education and preventative initiatives.

This bill will place new barriers in the way of health education and preventative initiatives. The bill proposes to enable the Land and Environment Court to rely on circumstantial evidence to establish that premises are being used as a brothel. The bill lists examples of the types of circumstantial evidence that may be consistent with the use of premises as a brothel, such as advertising the premises for the purpose of prostitution or the arrangement of the premises, including any equipment or articles on the premises.

The use of circumstantial evidence under the Disorderly Houses Amendment Act, particularly the reference to "the arrangement of the premises or of the furniture, equipment or articles in the premises", will discourage best practice in occupational health and safety standards, safe sex practices and safe and enabling work environments. Other examples of circumstantial evidence listed in the legislation, such as "information in books and accounts", will discourage sound business practices, including bookkeeping practices and the paying of tax.

A huge concern is that the removal of harm minimisation equipment and literature, such as condoms and safe sex literature, will lead to a significant increase in HIV-AIDS and other sexually transmitted diseases. In short, this move undermines the present high compliance of sex industry businesses with occupational health and safety standards and sound business practices. Workers will remove anything from their home if there is a possibility it will be used in court against them as circumstantial evidence.

Another example of circumstantial evidence that is of concern is the use of telephone conversations. Allowing the content of telephone conversations to be used as evidence in court will prevent private workers from negotiating sex, including safe sex, on the phone. In the interest of public health, and to prevent potentially

violent situations in their homes, private workers must be able to discuss the service, the fee, and safe sex practices frankly on the phone before they give out their address and invite the client home.

There would be a great danger if advertisements for private workers were allowed to be used as circumstantial evidence. To avoid detection by councils, private workers will have to solicit their clients in the streets of their local neighbourhood. Driving sex workers from their homes onto the street is extremely undesirable. The bill will also catapult businesses that currently have a high compliance rate with regular business duties such as account keeping and paying tax, back into the dark ages.

Part of the rationale behind the introduction of the 1995 amendments was to address corruption, particularly police corruption. Decriminalising the sex industry helped to stamp out corruption. During the years, however, corruption has shifted from the police to councils. There is evidence that corrupt council officers harass non-approved brothels. They do this by posing as council officers and demanding free sexual services from private workers in home-based business on the basis that their use is unauthorised.

**The Hon. Dr Brian Pezzutti:** That is illegal; refer to it to ICAC.

**The Hon. IAN COHEN:** Certainly, but it is happening in this sort of industry. There is evidence that corruption has increased significantly during the past 18 months and has great potential to become systemic. Some cases involving private workers have been reported to the ICAC. That would interest the Hon. Dr Brian Pezzutti. The bill will only increase the likelihood of corruption. It was pointed out on page 10 of the brothels task force that:

... illegal operators are vulnerable to corrupt conduct by council officers—as they were vulnerable to corrupt conduct by police before the DHA Act.

**The Hon. Doug Moppett:** Where does all this material come from?

**The Hon. IAN COHEN:** It is official, in black and white on page 10 of the brothels task force report, and I am disappointed that the Hon. Doug Moppett has not read it.

**Ms Lee Rhiannon:** They are not as thorough.

**The Hon. IAN COHEN:** We saw an indication of that in the lack of opposition from the Coalition earlier. Changing the definition of a brothel to allow two workers to operate in premises without its being defined as a brothel, and the introduction of a State environmental planning policy to exempt low amenity impact operators with up to two workers in residential areas, would significantly stamp out opportunities for corruption at the council level. I want to put on the record an individual's experience as a private home-based worker. She said:

I am a private sex worker, working from home. I am a mature woman, in my later stage of life, and found myself unemployable, as I don't have the skills required to be up with the times, and by the time I would have acquired them, I would have starved. I have been able to feed, clothe, and house my daughter, which I would not have been able to do otherwise.

A few weeks ago council issued an order for me to stop working from home. If I did that I would soon be homeless and on the dole. Last week two policeman came to my house. They said they were on council business. It's so scary. In all my years of being a private sex worker, I have never experienced harassment.

My home is a safe, clean environment, and I have a quiet and private entry, which is separate. I maintain good hygienic practices, and use hospital strength disinfectant in the shower areas and floors. I supply liquid soap so no contact can be made with a bar of soap. I have a quality abode, which my clientele like, as its very discreet.

I only work part time, and I am in an area zoned mixed residential and commercial. I have other business around me. I am a good person, and wish to be able to make the choice of what to do in my own time and place.

My girlfriend comes and stays with me. She also is a sex worker, and I feel safe, when we are here together as she has been bashed doing outcalls. I prefer to be at home, so we can look after each other.

I am fully aware there is a power play, that the owners of brothels would like to control all the working girls, and not let them have their own choices. I thought this country is a free place, and encourages free enterprise practices, so I don't know why there is not a more definite understanding of the need for the choice of where you want to work, and if it's privately, it should be without harassment.

Our lives are in a turmoil due to the feeling of the need to keep moving, due to the harassment of council, which makes you feel sad as it would be nice to settle in one home and completely unpack so we can be the normal family unit we are trying to maintain. We feel very sad, that we can not put everything out on display, like our good pictures and china.

That is a simple basic statement from a person who wants to live her life and not be harassed at work. A media release entitled "Start Counting Your Condoms" states in part:

The bill would allow for councils to include evidence of "equipment" normally associated with prostitution so we are asking the question about condoms.

How many condoms is too many condoms?

For two decades we've been telling people to grab a handful of condoms and this message has earned us an international reputation for HIV prevention.

Now it looks like if you're a responsible and sexually active adult you may come under the spotlight for having too many condoms.

How many condoms can I have beside the bed or in my bathroom cabinet before I am considered to be running a brothel?

How many condoms can I have in my home before the local council comes knocking on my door demanding a development application as a brothel?

Melissa Hope from New York City sent an email which states:

After consultation with organized sex workers in NSW and as a member of the International Committee for Sex Workers' Rights and the Network of Sex Work Projects, I send the following:

It is in the interest of the public health; the health, safety and privacy of sex workers; and their clients and their families, that sex workers have a legal and anonymous option to work from home—off the streets and without a middleman.

I most strongly urge you to support to Green Party Amendments to the Disorderly Houses Amendment (Brothels) Bill to redefine a brothel as having more than two workers. In addition, up to two private sex workers—(2 for safety reasons) must be able to work in all zones, including residential zones.

I have also received an email from Kate Larkin.

**The Hon. Dr Brian Pezzutti:** Are you going to read all of them? I have about 80 emails.

**The Hon. IAN COHEN:** I am reading small, selected parts for the record and for the edification of honourable members. She states:

This legislation has major flaws that will immediately cause immense damage to the NSW Health Department's HIV prevention strategies—proven to lower the risks of HIV transmission within the Sex Industry in NSW.

The clients of female sex workers engage in multiple risk-taking behaviours in relation to HIV/AIDS. "Clients are twice as likely to have had unsafe sex with twice as many people as non-client men are. They are twice as likely to have had sex with another guy, and three times as likely to have used injecting drugs".—(Venereology, the International Journal of Sexual Health—Volume 12, #1, 1999. "Characteristics, Attitudes and Risk Behaviours of Australian Men Who Visit Female Sex Workers". S Moore)

If the Government's Amendments go through as they are, they will totally de-stabilise the delicate balance of confidentiality and tolerance that exists between private sex workers, their clients and the general public. This Bill will dis-empower sex workers when negotiating safer sex and non-penetrative options with their clients, and force sex workers from their safest working environment—their own home.

This Govt Bill, in its present form, raises major issues of concern in regard to Public Health, Human Rights, Women's Rights, Workplace Health & Safety and the right of the general adult public to anonymously access the discreet environment private sex workers provide. However none of these issues have been raised by Local Councils.

One of the ill-advised changes to the Disorderly Houses Amendment Act (1995) will allow Local Councils to use Adult Services advertisements as circumstantial evidence in Court. Councils will be encouraged to spy on private workers and their clients and publicly expose them by taking them to Court. This will force privates to either work underground—(vulnerable to corrupt Local Council Officers), visibly on the streets, or in large mainly male-run brothels, giving away half their earnings from every job and losing control over which clients they see.

Other Government Amendments will also suddenly allow Local Councils to use workplace safe sex equipment—(condoms, lubricant, rubber gloves), safe sex literature and other sex industry safety resources as evidence of a premises being used for the purposes of prostitution. That will totally undermine all current HIV/AIDS prevention programmes within the Sex Industry.

Marilyn Bliss, Area Co-ordinator HIV, HCV and Sexual Health Services, Public Health Unit, Wallsend, New South Wales, writes:

My colleagues and I have worked very hard over the years to educate sex industry workers. Do not accept bills that are detrimental to and likely to put sex workers underground. Sex Workers have been very responsible in using condoms and having safe sex and therefore not spreading HIV among the heterosexual community. There needs to be an acceptance of the varying forms of sex work and legislation needs to ensure the safety of them all.



Saul, whom I met today, states:

The Disorderly Houses Amendment (Brothels) Bill 2001, will give Local Councils the same policing power over the Sex Industry—the NSW police used to have. The Disorderly Houses Amendment Act of 1995 was instigated because the Woods Commission made it abundantly clear that the NSW police abused their powers over the Sex Industry. Driven by their greed and empowered by inappropriate regulation they showed great dedication to lining their own pockets with the money they stole from sex workers using stand-over tactics—knowing full well that individual sex workers were unlikely to stand up to them.

**The Hon. Helen Sham-Ho:** Point of order: Standing order 85, which relates to continued irrelevance or tedious repetition, states:

The President or the Chairman of Committees may call the attention of the House or the Committee to continued irrelevance or tedious repetition on the part of a Member, and may direct such Member to discontinue his speech: Provided that the Member so directed shall have the right to require the President or Chairman to put the Question that he be further heard, and such Question shall be put without debate.

The Hon. Ian Cohen has spoken for half an hour or 40 minutes about sex workers' sad stories. I think he should stop at this point.

**The Hon. IAN COHEN:** To the point of order: The Hon. Helen Sham-Ho has taken the floor time and again in this House to speak about subjects that interest her. It goes against the traditions of the House to prevent a member from expressing his views and quoting different constituents who wish to put their opinions before the Parliament. The Hon. Helen Sham-Ho is generally impatient and intolerant when the hour is late. She seeks to curtail the speaking time of others while speaking at length herself on matters that concern her. I do not choose to speak at 1.30 a.m.; it is the Government's agenda. I would be quite happy to return tomorrow, continue the debate at a reasonable hour, and work throughout the day. I believe that the Hon. Helen Sham-Ho is going against the traditions of the House that allow members to express themselves in this place.

**The Hon. John Jobling:** To the point of order: I understand why the Hon. Helen Sham-Ho has drawn your attention to standing order 85. However, the Hon. Ian Cohen has been giving a series of examples—many of which I concede are very similar—and quoting different people. All honourable members have received many emails and much correspondence, the contents of which are similar, to say the least. However, I do not believe the Hon. Ian Cohen has transgressed the standing orders, as he has been giving different and separate examples and quoting different people.

**The Hon. Helen Sham-Ho:** Further to the point of order: I do not think it is fair of the Hon. Ian Cohen to attack me personally. In answer to the Hon. John Jobling's point, the Hon. Ian Cohen was repeatedly giving examples in debate.

**The ACTING-PRESIDENT:** Order! There is no point of order. Although the Hon. Ian Cohen's examples were similar, they were, as the Hon. John Jobling pointed out, separate examples and he has quoted from different correspondence he has received. The Hon. Ian Cohen may proceed.

**The Hon. IAN COHEN:** Thank you, Mr Acting-President. I will proceed quickly. These are different examples, should honourable members wish to listen to them.

**The Hon. Duncan Gay:** Are these from the emails that we all received?

**The Hon. IAN COHEN:** You may well have received them.

**The Hon. Duncan Gay:** Aren't you an idiot!

**The Hon. IAN COHEN:** Takes one to know one, doesn't it? As I said before, I do not set the agenda. We are here because the Government chooses for us to be here, and I will make my speech regardless of the hour.

**The ACTING-PRESIDENT:** Order! The Hon. Ian Cohen will return to the substance of the bill.

**The Hon. IAN COHEN:** The Deputy Leader of the Opposition can go to bed. He is being totally unreasonable. The Government sets the agenda, so the House is sitting late. I would be happy to sit on Friday. It is a reserved sitting day; that is not a problem. Saul, who is a male sex worker and whose point of view should be put to the House, continued:

Look at the evidence attached to see how some Councils have already consciously used devious means to bypass the current Disorderly Houses Amendment Act 1995, in attempts to bully individual sex workers who work from home, or motel rooms in their area. Gosford Shire Council is obviously guilty of this in the attached file.

If the Councils are already bypassing the DHA Act 1995, what evil will they do when they achieve greater powers to close down individual sex workers.

Rindy writes:

As a private sex worker, working primarily with people with disability or with sexual dysfunction, I am deeply concerned about the short and long term implications of the Disorderly Houses Amendment (Brothel) Bill 2001, which has been tabled in the Upper House.

This legislation has major flaws that will immediately cause immense damage to the New South Wales Health Department's HIV prevention strategies—proven to lower risk of HIV transmission within the Sex industry in NSW.

**The Hon. Doug Moppett:** We have listened to an avalanche of words and I am still not sure whether you are in favour or against the bill. You just go on and on with these examples.

**The Hon. IAN COHEN:** If the honourable member wants me to explain it all over again I will do so. I believe that other honourable members have a greater ability to comprehend this debate.

**The ACTING-PRESIDENT:** Order! The honourable Hon. Ian Cohen has the call.

**The Hon. IAN COHEN:** Darren Tonko states:

As a Disabled person who uses the sex industry I am deeply concerned about the short and long term implications of the Disorderly Houses Amendment (Brothel) Bill.

Disabled people have written to us about this legislation. Essentially, the Greens oppose the bill in its current form. I will move amendments to this legislation in Committee. It might be necessary for me to laboriously go through all these amendments which are essential for the safety of people in the industry. These basic human rights amendments will enable us to roll back a bill which the Greens strongly oppose.

**Ms LEE RHIANNON** [1.41 a.m.]: I join my colleague the Hon. Ian Cohen in opposing the Disorderly Houses Amendment (Brothels) Bill. I hope that the Hon. Doug Moppett is now aware that the Greens are opposing this bill as he appears to be confused about the Greens position. On behalf of my colleague the Hon. Ian Cohen I express appreciation to the Private Workers Alliance and the sex workers outreach project for providing us with research and a great deal of general help in formulating our position on these important issues. This legislation is certainly causing workers in the industry as well as people who use the industry much distress.

The Greens oppose this bill because it militates against safe work practices in the sex industry and because it further marginalises private sex workers. This bill directly contradicts the harm minimisation approach to the sex industry. By allowing the presence of items that could encourage safe sexual practices, such as the use of condoms and literature, to be used as circumstantial evidence in a Land and Environment Court hearing to close an illegal brothel, this bill would directly discourage safe sexual practices in the industry. One of the issues that honourable members must take into account tonight when they vote on this legislation is that they will be voting—if they support the bill—for practices that will result in the spread of HIV and sexually transmitted diseases.

Under this bill a sex worker would be discouraged from purchasing large volumes of condoms which could be used in a court hearing as circumstantial evidence of running a brothel. This increases the risk of a worker running out of condoms on a busy Saturday night and hence being driven into unsafe practices. This bill threatens to compromise both public health and the safety of workers. It is going in the wrong direction. It will do nothing but add to the already large risks faced by sex workers in their daily lives. The Disorderly Houses Act 1995 that this bill seeks to amend is well founded on the concept of replacing prohibition with regulation. This approach works well for many social issues, including the sex industry and drugs.

By removing unhelpful legal barriers opportunities can be created for harm minimisation measures, such as access to health and counselling services. However, the Greens are concerned that the good intentions of the Disorderly Houses Act are being undermined by the 1996 Department of Urban Affairs and Planning [DUAP] regulation which gives councils the ability to ban brothels in all but industrial areas. The Greens are

highly sympathetic to the needs of neighbourhoods to maintain amenity. I emphasise that point because it is one on which our position is frequently distorted. Many communities have valid concerns about the adverse aspects of large brothels, including noise, amenity, safety and nuisance.

There are strong arguments for restricting medium and large-scale brothels in residential areas. The Greens accept the need to regulate medium-size and large brothels to achieve this in recognition of their essentially commercial nature and the adverse impacts that they can have on a neighbourhood amenity. But there is another side to the sex industry—the home-based private sex workers who operate discreetly from a residence, usually singly or in pairs. These home businesses are discreet by nature. It is not in their interests to make a fuss or to make their presence felt. Both workers and their clients strive for anonymity. Consequently, they have little or no impact on residential amenity beyond that of a standard residential dwelling. It is clear, for example, that the adverse impact on residential amenity of a single 20-worker brothel can be far greater than the impacts of 10 small two-person home-based industries.

**The Hon. Duncan Gay:** You would not notice it on a busy Saturday night.

**Ms LEE RHIANNON:** I urge all honourable members to really weigh that up. I note the interjection of the Deputy Leader of the Opposition. I have been told by many of these home-based sex workers that they stagger their clients over a period. More often than not they do not have busy periods as they are able to control their clients' visits. Home-based sex businesses are also safer for both workers and clients as they are less able to be exploited. Home-based sex businesses create far better opportunities to encourage safe sex and allow for access to counselling and other health services. Today, when I met with people from these organisations, one of the concerns that was expressed was how difficult it would be to track many of these workers when they are forced out of their residences onto the road or into big brothels.

Home-based sex businesses remove workers from the inevitable risk of physical harm from being on the street and they allow workers more control over their clients. Often these businesses develop a regular clientele which militates against the spread of disease and lowers the risk for workers. Home-based sex businesses encourage a sex industry that is based on more control for the worker and that creates a more respectful attitude amongst clients. Taking into account the fact that the majority of members who have been interjecting in this debate are men I suggest to them that they should watch their comments. We are dealing with an industry that is able to get more respect from its clients.

If we undermine and possibly destroy that industry we will be placing mainly women sex workers in some dangerous situations. I find disturbing the fact that the male members of this House are not able to grapple with, or they are refusing to grapple with, that issue. Home-based sex businesses encourage the payment of taxes and the joining of organisations such as unions, which promote the rights of these workers and assist in the development of safe practices. There are profound reasons for letting small home-based businesses operate without harassment. At the moment, what we are doing is a form of harassment. Many councils are using DUAP's regulation to pursue these businesses, even when there are no residential complaints against them. I find that totally unacceptable.

These people are operating in many places and nobody actually knows that they are there. When we pass this legislation it will be open slather. People will conduct private investigations and track down these businesses and waste council money in an attempt to get rid of them. Some are being tracked simply from their advertisements in local newspapers. How could that possibly hurt anybody? There is an appalling element of sanctimonious discrimination in the ill-treatment of home-based sex workers. There is no valid argument for treating these workers differently from any other home-based occupation of equivalent amenity impact, other than a judgmental and discriminatory attitude to prostitution.

Such attitudes are unhelpful in the battle to minimise the harmful and exploitative impacts of prostitution. They also ignore the wide range of men who frequent the services of sex workers. Stigmatising sex workers or their clients will not resolve the problems relating to and the impacts on their industry. In particular, it will make the control of AIDS and other sexually transmitted diseases more difficult. It will make access to these workers more problematic and it will create greater opportunities for workers to be placed at physical risk. This bill, however, is an open invitation to harass private sex workers and their clients operating from home. The male members in this House have real trouble understanding the big difference it will make when many of these sex workers are forced from private homes onto the streets and into big brothels.

It will encourage vigilantes and spying and it will compromise the anonymity of clients. By allowing appointment books and other accounting documents to be used as evidence, it will discourage proper

bookkeeping and hence will militate against sex workers paying tax. This bill makes it easier for councils to harass these businesses. By allowing circumstantial evidence to be used against them, the bill shifts the focus away from amenity impacts and onto judgments about the trade itself. It will drive small home-based workers onto the street and it will expose them and their households to unnecessary neighbourhood scorn. It is an attack on their rights to privacy. The Greens strongly support the protection of neighbourhood amenity. Our track record in campaigning against inappropriate development and other assaults on the residential environment is second to none. But we can never support the kind of unjudgmental vigilantism that this bill encompasses.

**The Hon. John Hatzistergos:** It is non-judgmental.

**Ms LEE RHIANNON:** I note the interjection of the Hon. John Hatzistergos that it is non-judgmental. How could he possibly say that? The only possible explanation is that it is 10 to 2 in the morning. However, the worst aspect of this bill is that it allows equipment and articles that are consistent with the use of premises for prostitution to be used as circumstantial evidence. This works directly to discourage safe sex practices. No sex worker will be happy to keep an adequate supply of condoms, gloves, lubricants or mouth dams if they are in fear of being closed down on the basis of circumstantial evidence. The ridicule going on in this place is absolutely disgusting. Members should at least sit in silence rather than show their feelings on this issue. Again, it is one of those issues on which the male members of this House have severely compromised themselves. No worker will keep a supply of safe sex literature. No worker will arrange their space so they can ensure that their clients wash before sex. Australia has done an excellent job in controlling sexually transmitted diseases. Our progress has been based largely on our ability to confront sexual practices and talk about them openly and without judgment. That is the essence of our low HIV rate in this country. We have encouraged the use of a range of equipment to prevent infection with remarkable success. It is a tragedy that this bill now attempts to create a barrier to the use of safe sex equipment.

**The Hon. John Hatzistergos:** Why can't they just set themselves up legally? Get the development consent and they are set up legally.

**Ms LEE RHIANNON:** Members know why the development consent is being used: as a form of harassment to move sex workers on. That is plain logic and you are hiding behind it if you say that it is not. My colleague the Hon. Ian Cohen will be moving an amendment to address some of these issues. The most blatant failing of this bill is excluding safe sex equipment from the evidence that can be used in a Land and Environment Court challenge. I urge members to think carefully about this amendment because it is one way we can offer some protection to sex workers.

**The Hon. John Hatzistergos:** This morning you were supporting local government; now you're out bagging them.

**Ms LEE RHIANNON:** We actually have a balanced attitude. The Hon. John Hatzistergos seems to have woken up at this late hour. I point out that we do not give absolute support to anything in this life. That is an unwise course, if that is where life is taking you.

**The Hon. John Hatzistergos:** It is good to see you getting into this debate, unlike the National Party.

**The Hon. Dr Brian Pezzutti:** She's not a Green.

**Ms LEE RHIANNON:** I have been here for three years and once again we hear the old tired argument that I am not a Green. I would have thought by now you would have come up with something more original. The Treasurer started it by saying, "She's not a Green, she's an old com" and all of you just lamely follow him. Surely you could have come up with something original. As it was the Treasurer's original line maybe he can keep it, but the rest of you are giving a pretty weak-kneed performance. I urge honourable members to put aside their prejudices and personal views on sexual practices and remember that our responsibility is to protect the lives and health of all Australians.

It is our paramount duty to ensure that sex workers face no disincentives to safe practices. It is easy to take the so-called high moral ground and denounce prostitution. It is simple to say that all brothels are immoral or that all prostitution is exploitation. While both these statements may or may not be true, neither helps in the task of minimising the harm and risk posed by the industry. Our culture, largely because its evolution has been male dominated, has spent much effort excoriating prostitutes while ignoring that prostitution involves both workers and clients. I hope members heard that comment: it involves workers and clients. It is time we

redirected that effort into making the industry safe for the workers and for the clients. This bill does not achieve that important outcome. Again, on behalf of the Greens I place on record our appreciation to the Private Workers Alliance and the Sex Workers Outreach Project for their assistance on this important subject.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [1.56 a.m.]: On behalf of the Australian Democrats I express great disappointment at the Disorderly Houses Amendment (Brothels) Bill. The bill will insert an additional section 17A in part 3 of the principal Act. Under the proposed section, the council making an application to the Land and Environment Court to prevent premises from being used as a brothel may present to the court circumstantial evidence assisting its case. The types of evidence on which the court may rely, but is not limited to, include advertising material, accounting records, furniture and interior arrangements, and type of patronage that would indicate the premises in question are indeed a brothel.

Prostitution has been and may remain a controversial issue regarding morality and public policy. However, one would hope that some progress could be made in this area. Ignorance seems to lead to fear. When a child first rolls over, everybody is happy; when it makes its first sound everyone is happy; when it crawls, everyone is happy; when it walks everyone is happy. People rejoice about every milestone a child achieves, but as soon as that child asks about sex there is panic. We have a strange attitude to sex—perhaps because it is an elemental force in our lives that we do not want to confront. Those who are more enlightened recognise a social need for prostitution and for sex as part of the need for emotional health in society. I do not pretend that I have read something like the *Function of the Orgasm* by Wilhelm Reich, but I believe it is generally recognised that a reasonable sex life gives one a balance in life that is not present if one does not have a reasonable sex life.

**The Hon. Ian Cohen:** Are you saying that the Opposition is somehow deprived?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I was not making that implication, but funny you should bring it up! The historical reasons for monogamy were to help determine inheritance—which was very important to the upper classes and was aped by the lower classes—and to prevent infections, which were something of a problem, particularly when syphilis was introduced from the New World. When I visited Stratford-upon-Avon I discovered that in the days when infant mortality was very high and a large number of people were dying of the plague, there was not a great deal of concern about who gave birth and who was responsible for the children of the village. The main problem was to keep the birth rate sufficiently high so there were enough people to gather the harvest. It was only inheritance that made monogamy so important to the other classes. In Victorian times the only respectable way to have a sex life was in a married, monogamous relationship. That has caused great difficulties, which have led to the continuation of prostitution.

**The Hon. Dr Brian Pezzutti:** It was just a little bit before Victoria.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** The point is taken, but prostitution is said to be the oldest profession, and again that reflects the way the human being is structured. We often forget that we are effectively animals with animal drives that do not necessarily fit into a social construct that some might like to impose upon us. The criminality associated with prostitution—

**The Hon. Michael Egan:** Point of order: The bill before the House, the Disorderly Houses Amendment (Brothels) Bill, has a very limited object. It is to facilitate proof of the use of premises as a brothel in proceedings before the Land and Environment Court. I do not think the House needs to hear the history of the world to understand or decide how we are going to vote on this bill. The Hon. Dr Arthur Chesterfield-Evans is making remarks that have nothing to do with the bill. Just because he is talking about prostitution at some stage in the world's history does not mean that it is relevant to the bill. I know that taking this point of order will have no impact on him at all but I think I should, at least on one occasion tonight, take that point.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** To the point of order: I suggest there is no point of order. The Treasurer is merely making a debating point. As the person who regularly wastes most of question time rabbiting on and not answering questions, I suggest he has no case at all.

**The ACTING-PRESIDENT:** Order! The honourable member will confine his remarks to the objects of the bill.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I was just laying down the philosophical framework for prostitution in society. One should always work from the general, the philosophical, to the particular—which is the bill that we are happy to deal with this morning. People sometimes turned to

prostitution because of a desperate need for money to buy drugs. That introduced a criminal element because drugs were expensive and crimes were associated with their illegality. Other criminality derived from the corruption that occurred because of the illegality of prostitution. That resulted in corruption in the police force, and that corruption was investigated by the Wood royal commission. The concern I have with this legislation is that corruption in councils, which are regulating brothels, is replacing the corruption that formerly occurred in the police force when it was regulating brothels. Individual sex workers, peak industry bodies and health agencies have approached the Democrats with concerns about the potential effects of this bill. In his speech on the 1995 bill the former Attorney General the Hon. Jeff Shaw said:

In 1998 the Court of Appeal held, in *Sabuse v Shaw* that a brothel is a disorderly house regardless of whether it is disorderly in the usual meaning of the word. This being the case, police may seek an order from the Supreme Court that any premises operating as a brothel be closed down merely because the premises are being used for that purpose.

If police took this action with every brothel that came to their attention, it would mean that even orderly, well-run brothels would be closed and the prostitutes would be forced back on to the streets. Thus, prostitutes to ply their trade would use many more city and suburban streets. This is unsuitable and undesirable for a number of reasons:

- Street prostitution is generally offensive and undesirable.
- Health and social workers have more difficulty reaching street prostitutes with their health and safe sex practices education programs.
- Street prostitutes are at greater risk of HIV infection than those who work in brothels where some medical supervision exists and where the use of condoms may be enforced.

It is not the intention of the bill that brothels be permitted to operate unregulated. To this end, it also provides an avenue for the community to make complaints to local councils where a brothel is having a significant detrimental effect on the neighbourhood. Councils are empowered under these provisions, to apply to the Land and Environment Court to have a brothel closed down.

Neither is it our intention, with the introduction of these provisions, to limit those applications appropriately based on planning controls vested under the Environmental Planning and Assessment Act 1979. The only change to existing law affected by this proposal is to the basis for, and jurisdiction of, applications under the Disorderly Houses Act to close a brothel, which is not otherwise disorderly. Thus police will still be able to apply to the Supreme Court for a declaration under the Disorderly Houses Act where it is disorderly in the usual sense of the word.

I am not as harsh on street prostitutes as the Attorney was in 1995, but I acknowledge that they are conspicuous and offend some people and affect the amenity of a suburb. It was clear when the Disorderly Houses Act was amended in 1995 that it was an attempt to force councils to develop policies in consultation with their communities about managing brothels and prostitution in their local government areas. The report of the brothels task force in October this year noted:

It was clearly the intent of the 1995 reforms that all brothels would be regulated under the Environmental Planning and Assessment Act, including private workers operating outside of residential dwellings or home-based brothels.

The Sex Workers Outreach Program [SWOP] estimates that private workers comprise 40 per cent of the industry. Since then councils have adopted, and even developed, their planning policies dealing with prostitution. Some councils completely ban brothels in residential areas and allow them to operate only on industrial estates. However, material evidence that councils may provide to the Land and Environment Court appears to be contrary to the brothels task force report. Page 12 of the report states:

Prohibiting home-based brothels may not result in sex workers relocating to areas where brothels are permissible. Instead they may continue to operate illegally in residential areas.

Sex workers in home-based brothels are less likely to seek development consent, because it reveals their identity and location, with the result that they can be subject to various forms of abuse and violence. The identification of individual sex workers through the development application process is also contrary to the recommendations of the legal working party of the intergovernmental committee on AIDS, the AIDS Council of New South Wales [ACON] and the policies of the Australian Federations of AIDS Organisations. The circumstantial evidence outlined in note (e) attached to proposed section 17A (2) reads:

evidence of the arrangement of the premises, or of the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

This item warrants the concern of the Democrats. The list could apply to condoms, safe-sex literature or other articles to prevent sexually transmitted diseases. As a health professional I am concerned about the possible interpretation of this clause. Health education is extremely important and it is often extremely hard to get to the targeted people. Whether we are talking about sex or the use of tobacco, the people most likely to engage in

unhealthy practices are those that it is hardest for conventional campaigns to reach. Stevie Clayton from the AIDS Council of New South Wales is concerned that the potential application of this section on home-based sex workers would mean they would not use condoms or have educational material because such articles are consistent with the use of the premises for prostitution and, thus, they may expose them to more hazards from people who are attempting to close them down. Section 4.1 of the report of the brothels task force states:

The last independent review of the implementation of the National HIV/AIDS strategy ("the Feachem Report") in Australia found that a HIV epidemic among sex workers had been avoided in this country. The finding was based on analysis of nationally available data regarding HIV-related knowledge, attitudes and behaviour among sex workers in addition to epidemiological data.

Overall condom use among brothel-based workers was found to approach 100% and condom use with non-client sexual partners was assessed as probably as good as, if not better than, that reported by non-sex workers and their sexual partners. The scientific literature on sexually transmitted infections [STIs] supports that finding and documents the changes in behaviour which occurred in the female sex industry between 1984 and 1991. O'Connor *et al* reported zero prevalence rates for chlamydial and gonococcal infections at first presentation of female sex workers to Sydney Sexual Health Centre in 1996; and comparable STI rates among female sex workers to that of the general heterosexual population.

That means that the practices engaged in by sex workers and their educational function are extremely important, and the use of safe-sex aids in their practices makes a hell of a difference to the prevalence of disease in Australia, and thus has immense public health significance. That is what I am talking about. Clients of female sex workers engage in multiple risk-taking behaviours in relation to HIV-AIDS. An article entitled "Characteristics, Attitudes and Risk Behaviours of Australian Men Who Visit Female Sex Workers" in *Venereology, the International Journal of Sexual Health*, Volume 12, No. 1, 1999, stated:

Clients are twice as likely to have had unsafe sex with twice as many people as non-client men are. They are twice as likely to have had sex with another guy, and three times as likely to have used injecting drugs.

That article was also quoted by my colleague the Hon. Ian Cohen. The point it makes is that the educational function of sex workers, the way they work and where they work are extremely important. Page 13 of the report of the brothels task force states:

Workers in illegal home based brothels are less likely to access occupational health and safety programs. The prevalence of HIV infection and sexually transmitted diseases among Australia sex workers remains one of the lowest in the world. The low STI and HIV/AIDS prevalence in NSW sex workers is largely due to the voluntary cooperation of sex workers with outreach and advocacy services. These services are undertaken by specialist sex workers projects in addition to the statewide network of sexual health services. These measures protect public health by minimising the transmission of disease and infection. Prohibiting home based brothels, or requiring development consent for these brothels, may have the effect of creating barriers to these services and programs.

While we understand the consequences of not having stable situations for workers, we are obviously at risk. That was acknowledged by Alexander Downer when he spoke at the October 2000 Asia-Pacific Ministerial Meeting. In a statement headed "HIV-AIDS and development in Asia and the Pacific—a lengthening shadow" he said:

We acknowledge the fundamental importance of the full realisation of human rights and freedoms and that the presence of stigma, silence, discrimination, denial, gender inequality and inadequate legislative frameworks limits our ability to combat the HIV/AIDS epidemic.

Mr Downer further said:

Policymakers have contributed to the culture of denial that has severely limited their countries' ability to respond effectively to STDs. The strong dichotomy between public disapproval of premarital and extramarital sex coupled with their acceptance for men is seen in the political arena as well. While a politician may be firmly convinced of the need for action to address STDs and HIV, in public he or she takes a more conservative stand for fear of political consequences. If progress is to be made to contain these diseases, the governments and policy makers need to be convinced that it is in their own best interest to change restrictive laws and address the issues now.

The regulation of brothels is primarily a health objective and should be treated as such. It should not be treated as merely a question of what the neighbours like or do not like.

**Reverend the Hon. Fred Nile:** Would you like a brothel next to your house?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It is interesting that Reverend the Hon. Fred Nile should make that interjection. When I was growing up in Port Kembla there was a house opposite which always had taxis pulling up and leaving. I thought it was a funny house because we could not afford a taxi, which was a great luxury, yet all these people arrived and left in taxis. I remember that the taxis came and went

continuously. Years later my parents told me that the house was a brothel and that was why all the people came and went. I must confess that, having lived there as a kid and knowing practically everyone in the street, it never bothered me in the slightest.

**The Hon. Doug Moppett:** It might have been an SP bookie!

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** No, he lived three houses down on the other side. The fact that it was a brothel made absolutely no difference to me as a kid growing up in Port Kembla. My parents were aware of it; I was not.

**Reverend the Hon. Fred Nile:** Were they happy with it?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** They certainly made no comments to me one way or another, so perhaps they were more enlightened than I gave them credit for. In terms of personal protective equipment, the New South Wales WorkCover booklet entitled "Health and Safety Guidelines for Brothels" states:

This includes condoms, dams, gloves, water-based lubricants and other personal protective equipment such as towels and linen.

Obviously a sex worker is likely to have a large supply of sex toys such as vibrators and dildos. The WorkCover booklet further states:

Equipment such as sex aids which have the potential for contact with another person's body fluids should be covered with a new condom for each partner and equipment cleaned according to manufacturers instructions.

Sex industry businesses and independent or private sex workers have supplies of printed educational resources. Some may be on display in their businesses: for example, safe-sex messages for their clients such as those distributed by the Sex Workers Outreach Program [SWOP] to the New South Wales sex industry. As I said, it is important that these materials can be accessed, and sex workers have an important role to play in the education of their clients. Although sex industry businesses may not be in a position to display their development consent, sex workers might proudly display other certificates on their wall. For example, SWOP recently held disability awareness training for sex workers in conjunction with the Family Planning Association health group. Sex workers who completed this two-part training received a certificate of attendance.

A person from SWOP commented to me about the clause that provides that circumstantial evidence includes persons entering or leaving premises. She said she hoped that these visits were from outreach workers as well as clients. Basically, there is a problem with councils trying to stop the development applications of workers working in their own homes or in private premises. The Greens have amendments to this bill that would rectify the situation. I believe they are extremely good amendments in terms of increasing to two the number of people who may share premises, and in terms of exempting safe-sex aids from being used in evidence so that there is no discouraging effect. I had been trying to work out how to phrase an amendment to that effect, and I congratulate the Greens on their amendment. I believe that these amendments must be supported.

The problems that exist with home-based businesses was explained to me by the Private Workers Association, which said sex workers in New South Wales are experiencing harassment and standover tactics. This time it is not the police or organised crime that is the problem. In some areas of New South Wales local councils are protecting the interests of large brothel owners by forcing smaller operations and private workers to work outside the law. Private workers are estimated to account for 40 per cent of all sex industry business. The New South Wales Government must act now to prevent further corruption, and to safeguard the health and safety interests of the whole community.

The system which places councils in charge of a backdoor registration system—development application [DA] approval for all brothels—has proved a winner for a few owners of larger brothels who have the networks, money and stamina to fight for their DAs in court. Costs for brothel development applications through court proceedings vary greatly and range from a minimum of \$15,000 to \$100,000. According to the report of the ministerial task force on brothels, most court cases were won by the brothel owners, many because sufficient complaint or adverse amenity impact could not be established. After incurring such expense, some brothel owners with DAs are anxious to limit competition. That provides an incentive for owners to lobby council to eliminate perceived competition.

Most New South Wales councils currently prohibit private home-based businesses or small collectives in residential areas, which are generally female or worker-owned. There are reports of regional monopolies and



councils targeting predominantly private workers in their homes. Because they are unauthorised home businesses, these workers are vulnerable to corrupt behaviour by authorities. While most sex workers do not consider reporting to authorities the violence perpetrated against them, the Private Worker Alliance [PWA] understands that some cases involving private workers and corrupt council offices have been reported to the ICAC.

As I have stated before, the report of the ministerial task force on brothels states that sex workers in home-based businesses are less likely to seek development consent because it reveals their identity and location, with the result that they can be subject to various forms of abuse and violence. The task force report suggests that an amendment to State environmental planning policy [SEPP] No. 4 relating to development without consent and miscellaneous complying development could be made to allow home-based brothels without development consents across the State. That would make the regulation of home-based brothels similar to the regulation of other home occupations. Home-based brothels regulated in this manner could still be closed by local councils if they had an adverse impact on the amenity of the neighbourhood.

The final report of the task force goes into great detail about the benefits of allowing home-based brothels to operate without development consent, yet fails to make a recommendation to implement the changes to the SEPP. That is a great disappointment and I believe it should be taken up by the Department of Health with more courage than has been the case to date. The New South Wales Attorney General, Bob Debus, supports a non-discriminatory approach to private workers. During the two-year deliberations of the ministerial task force on brothels, the New South Wales Department of Health repeatedly advised local councils and the Department of Urban Affairs and Planning that prohibiting home-based workers or zoning small collectives out of residential areas endangers public health. It stated:

... in treating sex work as an industry and regulating it like any other analogous, personal services business, public health objectives are much more likely to be achieved.

Unfortunately, none of the councils took up the recommendation of the New South Wales Department of Health to look at South Sydney City Council's sex industry policy, which only two weeks ago won the Annual Royal Australian Planning Institute Award for Excellence in Planning in the category of Urban Planning Achievement, a major award, for guidance on the benefits of treating all home-based businesses equitably, based on their impacts on surrounding properties. Currently, most of the 3,000 private workers in New South Wales operate underground. This is counter to the intent of the reform as stated by Mr Carr in 1995 as follows:

The legislation removes the remaining legal impediments and stigmatisation that in the past have impeded health education and preventive initiatives. In the past there have been reports of fear of police [now council] harassment amongst sex workers, and reluctance on the part of sex industry owners and managers to allow access by health workers.

The additional evidence sought to be permitted in court as proof that a place is a brothel is entirely inappropriate in the context of a home-based business. For example, allowing the content of telephone conversations to be used as evidence in court will prevent private workers from negotiating safe sex over the telephone. In interest of public health, and to prevent a potentially violent situation at home, private workers must be able to discuss the service, pay and safe sex practices frankly on the telephone. I regard that as an invasion of their privacy, in the sense that they would be unable to hold a private conversation without it being used as evidence.

The solution to the problem, as I said before, is partly dealt with in the Greens amendment. Excluding two private home-based sex workers from the definition of a brothel, and making them exempt development statewide would undermine brothel monopolies and protect councils from acting as pimps for big business. Allowing home-based workers to operate within the law would help to normalise the industry, assist in bringing prices charged for DA-approved brothels in line with the true value of the business and attract non-criminal sex industry interest—people who are prepared to compete on fair grounds, rather than rely on the Government to pimp for them and eliminate their perceived competition, that is, small businesses and home-based businesses in residential areas.

The Private Worker Alliance urges the New South Wales Parliament to continue its bipartisan support for sensible sex industry regulation and public health strategies, and would appreciate the support of members of this House for an amendment that redefines brothels in accordance with the New South Wales Department of Health recommendations, as follows: revising the definition of a brothel to exclude operations of up to two private sex workers, and, for safety and corruption minimisation reasons, allowing private workers to work in pairs. The Sex Workers Outreach Project and the Private Worker Alliance, who have lobbied the crossbench, have conducted a very professional, practical and intelligent campaign. They have provided more factual information and reasoned sensible arguments for this bill to be amended, than the Government or the Opposition have managed.

**The Hon. Dr Brian Pezzutti:** You didn't even listen to the speech of the Hon. Don Harwin, which was very good. His speech was excellent, but you didn't even listen to him.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I listened to some of it. Erica Red, from the Private Worker Alliance wrote to me in the following terms:

As the Carr Government whips up a how to get tough on brothels campaign, private workers risk becoming cannon fodder in the weekly "get the prostitutes, law and order" stories leading up to the 2003 election.

It won't be the first time that this happens. Private workers have been used as a political football over and over again by councils, especially Parramatta, Gosford, Newcastle, South Sydney, Bankstown, Sutherland and many regional centres. How much satisfaction is there to be gained from repeatedly kicking private sex workers, many of whom are older women supporting children?

We are 40% of the industry. For the past two years private sex workers have been desperately trying to get our discreet home based businesses recognised as exempt development. Little is known about us, even though there are about 3,000 home based sex workers in New South Wales. It's just that we are so discreet. Discretion is the basis of the business.

In trying to comply with the legislation, some of us decided to come out at least in limited ways. We were determined to give this revolutionary legislative framework called the Disorderly Houses Amendment Act 1995 a good go. We wanted to fulfil our part of the bargain.

We consulted with councils and resident groups, and the Local Government and Shires Associations. We were excluded from officially participating in the ministerial task force on brothels deliberations. I do not know any other industry that would be excluded from deliberations intended to bring reform!

Since 1995, sex workers and specialist sex worker projects, have not been consulted in relation to how additional regulation made since the Act impacts on the health, safety, privacy and confidentiality of workers.

For the last two years the NSW Health Department made representation to over one hundred councils, the Department of Urban Affairs and Planning and the task force on brothels, informing them that current regulation of home based businesses is counter to this sector's minimum health and safety requirements. Councils ignored the recommendation on all counts.

The Health Department was only in an advisory role so it could not do more than advise. It is absolutely unacceptable for the Health Department to take yet another back seat on the issue of sex industry regulation on other advisory committees. It beggars belief that, in the midst of a new hetero-sexually based HIV-AIDS epidemic in this region, the sex industry will again be seen as predominantly a planning matter.

The new advisory body is designed to give those councils which are openly defying the legislation a chance to fulfil their obligation to allow at least one brothel per council area. Unfortunately this means that 90% of the industry will remain illegal and that almost all home-based workers will be underground, on the streets, or working for a middleman. Blind Freddy can see that councils in charge of regulating the industry doesn't work, until councils are ready to treat the industry like any other. Let us call a spade a spade and acknowledge that it has been many councils which have not fulfilled their end of the bargain.

The Ministerial Task Force on Brothels report noted that the health and safety of home-based workers could well be protected through statewide regulation and that this measure would also protect workers from violence and abuse in their home. Why is it that all the vilification and corrupt abuse experienced by workers during the task force deliberations, and acknowledged in the report, failed to produce a recommendation that stops the abuse? Why is it that the NSW Health Department is prepared to fork out \$60,000 for a project to rescue private workers, yet it is not prepared to take a strong stance on the issue and remedy the root problem?

At this point, we have lost all faith in the Government's ability to meaningfully engage with us. We question if the Government was ever serious about its reform intentions, or if even in 1995 the health and safety of sex-workers and clients was used as a reason for reform which would have otherwise had to come about by focusing on corrupt police.

So now that we have councils with the same powers that police used to have regulating brothels through Development Applications. This is at a time when ICAC found that 37% of corruption complaints in Councils were made in regards to DA applications. With 90% of the industry "illegal", I can see where this is heading.

So what's the answer I hear you say?

- 1) Get rid of the back door council licensing system (Development Approval) for all brothels. It's the blueprint for wide spread corruption opportunities.
- 2) Go back to the most elegant piece of sex industry regulation in the world, and implement the original intention of the Disorderly Houses Amendment Act before it became undermined through wimpy regulations. Do this by:
  - 1) Allowing councils to act only on sufficient complaints made by residents in the vicinity of the neighbourhood. The complaint must be about amenity impact. This is targeted action and it doesn't involve rate-payers money to be misused on "brothels" that blend discreetly into the amenity of the neighbourhood, but don't have a DA.

I will not support the Christian Democratic Party amendment, which basically states that local councils may prohibit brothels. That is simply saying that local councils may prevent many people from having a sex life.

That would be a gross prohibition and an almost absurd and outrageous attack on people's civil rights. It is just extraordinary. I think it shows how out of touch people can be, even members of this Parliament. I hope that the Greens amendment will be passed so that it can mitigate the effect of the bill. Otherwise, the bill will have to be opposed.

**Reverend the Hon. FRED NILE** [2.32 a.m.]: The Christian Democratic Party supports the Disorderly Houses Amendment (Brothels) Bill. We recognise that it is a bandaid solution to a major problem but it is one small step towards trying to rectify a serious situation that has now developed in this State. The bill will amend the Disorderly Houses Act 1943 to clarify the existing law concerning the evidence that the Land and Environment Court may rely on to establish that premises are being used as a brothel. The note following proposed section 17A (2) states:

Examples of circumstantial evidence include (but are not limited to) the following:

- (a) evidence relating to persons entering and leaving the premises (including number, gender and frequency) that is consistent with the use of the premises for prostitution,
- (b) evidence of the premises being advertised expressly or implicitly for the purposes of prostitution (including advertisements on or in the premises, newspapers, directories or the Internet),
- (c) evidence of appointments with persons at the premises for the purpose of prostitution that are made through the use of telephone numbers or other contact details that are publicly advertised,
- (d) evidence of information in books and accounts that is consistent with the use of the premises for prostitution,
- (e) evidence of the arrangement of the premises, or of the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

Those provisions should allow the Land and Environment Court to prove that premises are a brothel without council officers having to be sent into the brothel, as some councils proposed, to gain evidence of brothel activities. The current serious problem originated in 1995, when the Government passed the Disorderly Houses Amendment Bill and pretended that it was only decriminalising or reforming prostitution laws in New South Wales, a claim that the Government maintains. But one person who spoke the truth back in 1995 was the then Labor member for Kiama, Mr Bob Harrison. In his speech he bravely said:

I reiterate that the legislation is about legalising prostitution by stealth. Prostitution is about attracting young girls who are relatively attractive and, in most cases, poorly educated, into a life of shame. In that regard, it affects girls from working-class backgrounds who see an opportunity to earn some money to feed a drug habit or to overcome homelessness and other such problems. Instead of attacking the root cause of these problems, the bill will give the industry the imprimatur of the Government. In that regard, the bill is profoundly anti-working class. I am particularly ashamed of the fact that I am a member of the Fifty-first Parliament which will give this bill its blessing.

That was an accurate statement. Bob Harrison spelt out the truth. The Christian Democratic Party and other members of the House, who may or may not be Christians, and I am certain the majority of people in this State, regard prostitution as exploitation of women. Anyone who has the money can buy a woman and treat her as his property for half an hour, an hour or longer. I regard it as a modern form of white slavery. From a Christian point of view it is also sinful and immoral. It is unhealthy and involves degradation and exploitation. In 1995 I moved an amendment that was accepted by the House to add to the objects of the Disorderly Houses Amendment Act these words:

The enactment of the *Disorderly Houses Amendment Act 1995* should not be taken to indicate that Parliament endorses or encourages the practice of prostitution, which often involves the exploitation and sexual abuse of vulnerable women in our society.

I believe the acceptance of that amendment showed a degree of unhappiness among members about what was happening. Although the bill was passed we instinctively realised that we cannot be proud of having a prostitution industry operating in our State. The Greens and the Hon. Dr Arthur Chesterfield-Evans are blase about prostitution. They speak as if we should almost be promoting it as something that we should be proud of. But the test is whether people would be happy if their daughter or sister decided to become a prostitute. I would be surprised if anyone in this House would be happy about that happening. That shows that we should be doing all we can to prevent women entering the prostitution industry. We should do all we can to help those who are being exploited in the prostitution industry. I do not see them as the enemy to be attacked or hurt. I know that there is no simple way to help them. We should try to get them out of the industry, retrain them, educate them and help them to have a real career of which they can be proud.

Some prostitutes here tonight are giggling while I am speaking. They spoke to me earlier. They are happy at present in what they are doing. But I believe that in due course when they look in the mirror they may think differently. In the future the younger one may not be as happy as her friends pretend to be at this moment. Local councils were able to take action to restrain the use of premises as brothels by refusing development applications. I organised rallies in council areas to encourage councils to stop brothels opening in their areas. We succeeded in mobilising the ratepayers and the councils to adopt a policy of not having brothels.

That is the right of ratepayers in a democracy. They can come together and lobby their council and the council can respond. That is why I am suspicious of the so-called Brothels Planning Advisory Panel. Will it be some heavy-handed panel to force councils to have brothels when the ratepayers do not want brothels in their area? The wording indicates that the advisory panel will be able to assist local councils, but I would be very concerned if it was in some way standing over the councils and telling them that they will have to accept brothels as well as telling the councils where to put them.

**The Hon. John Hatzistergos:** Do you want them on the street?

**Reverend the Hon. FRED NILE:** I do not want them on the street either. That is why I oppose the Government's legalisation of prostitution. New South Wales is the only State in the world that has legalised street prostitution. I know that street prostitution exists and that people act against it, but it is legal in this State. People can legally solicit on the street in certain places and the police cannot do anything about it. It is legal. It cannot be done in view of a residence, a church, or a school, but there are places where prostitution can be engaged in on the street. There are no other places in the world where that can be done.

**The Hon. John Hatzistergos:** It is decriminalised.

**Reverend the Hon. FRED NILE:** It is legalised.

**The Hon. John Hatzistergos:** It is decriminalised.

**Reverend the Hon. FRED NILE:** It is legalised if a law against something is repealed. For example, in 1995 when the repeal bill went through, I showed the statute books contain laws against being on premises that were used for prostitution, running a brothel and living off the earnings of prostitutes, and those laws were all repealed. They are not on the statute books any more.

**The Hon. John Hatzistergos:** The correct term is "decriminalised".

**Reverend the Hon. FRED NILE:** No. That is a soft word that is used to confuse the public. People think that the Government has only decriminalised offences. Some people are very naive and think that decriminalisation means getting rid of the criminals, whereas it means getting rid of the police so that the criminals can freely run prostitution in this State. And they are doing so, just down the road in Pitt Street.

**The Hon. John Hatzistergos:** In what community has prostitution been successfully outlawed?

**Reverend the Hon. FRED NILE:** We could try. I am just saying that we should lead. New South Wales should set a pattern for the rest of the world and let us see what happens. I would prefer to take a healthy, positive approach, rather than give in and throw in the towel. The argument advanced by the Hon. John Hatzistergos is the very same argument that was used to perpetuate slavery. Wilberforce had to combat the very same arguments. People said that slavery was an institution, it had been around forever and nothing could be done. Wilberforce said that he did not believe that, and for 20 years he worked to convince people.

No-one is proud of slavery, but in those days people were proud of it. Even the churches opposed the legislation to abolish slavery. Initially the churches opposed the policy, so Wilberforce was fighting the churches as well as everybody else. The churches said that slavery was part of society and that it was an institution. The Hon. John Hatzistergos is arguing on the same premise in relation to the prostitution industry—namely, that it is inevitable and we should do nothing about it, so let us regulate it. I am saying that we should adopt a positive attitude. I am concerned about the people involved in the prostitution industry who are being abused and exploited.

The councils that I have worked with have taken proper steps and have gone to the Land and Environment Court. After those councils have spent thousands of dollars on court cases, the Land and

Environment Court has rejected their applications and has supported the brothel owners. I think a trick has been played on the councils because the Land and Environment Court should never have been involved with prostitution and brothels. It was never set up to deal with that, but suddenly it has been given the power to hear the applications of brothel owners. The court invariably rejects councils' applications.

**The Hon. Dr Arthur Chesterfield-Evans:** The court hears every other application, so why should it not hear those applications?

**Reverend the Hon. FRED NILE:** Because prostitution is different.

**The Hon. Dr Arthur Chesterfield-Evans:** It is a business.

**Reverend the Hon. FRED NILE:** The Hon. Dr Arthur Chesterfield-Evans believes it is a business. That is his view, and that is the Australian Democrats' view. I do not believe it is a business at all. The Hon. Dr Arthur Chesterfield-Evans wants it to be like a business—for example, a newsagency or a cake shop—except that it engages in illegal and immoral activity and should be treated differently. Applications concerning brothels should be heard in the Supreme Court or some other court, but not in the Land and Environment Court. As evidence of that, when the councils had their first cases people such as James McClelland said, "These brothels are not disorderly. They are neat and tidy. They have little tables and they have a little tablecloth and a pot of flowers, and so on." He made a fool of the law.

"Disorderly" had nothing to do with "order" at all. It was simply legal terminology that was used in the bill back in 1943. That term was then used in some court decisions to reject councils' applications by arguing that the brothel was orderly. I appreciate now that this bill will hopefully give the councils—I say "hopefully" because we will not know until the legislation is tested in the courts—greater success, but I still believe that these matters should not be heard before the Land and Environment Court. They should go to a proper court such as the Supreme Court, which would hear the evidence and weigh it up.

**The Hon. John Hatzistergos:** That is an outrageous attack on the Land and Environment Court. It is insulting.

**Reverend the Hon. FRED NILE:** No, it is not insulting.

**The Hon. John Hatzistergos:** You said that it is not a proper court.

**Reverend the Hon. FRED NILE:** I see it as a court that deals with environmental and planning issues. James McClelland and others actually said in the court, "We are not here to take into consideration the morality of the application." He said that the Land and Environment Court does not do that, but the Supreme Court could. Other courts could take into consideration morality and harm to the community and so on, whereas the Land and Environment Court ascertains whether there are enough car parking spaces to park the cars, whether there is a fire escape and whether the establishment is noisy. They are the matters that the Land and Environment Court deals with. It is not the court that should be dealing with brothels.

The Christian Democratic Party agrees in principle with the legislation but, as I have said, it is only a bandaid solution to a problem that the Government has allowed to develop. We now have hundreds of illegal brothels and hundreds of legal brothels. I guarantee that if a referendum were held today asking the people of New South Wales whether they are happy with what the Government has done the answer would be no. I warn the Opposition of the consequences because the speech made by the Hon. Don Harwin sounded almost identical to the Labor position. If the Coalition wants to get some votes it should develop a clear distinction between its policy and Labor Party policy.

I have prepared an amendment which I trust the Chamber will sincerely consider. Its purpose is to give the councils a black and white power to close down brothels. Why should brothel owners, many of whom are criminals, have a right of appeal? The amendment would give councils the power to close down brothels, and that would be the end of the matter. If an appeal process is provided, brothel owners who have thousands of dollars will ensure that the cases go on and on. I hope that the Chamber will accept the amendment and clean up the prostitution industry in our State.

**The Hon. Dr PETER WONG [2.46 a.m.]:** I will comment briefly on the bill. I am concerned that the Greens and the Australian Democrats seem to think that we have rights and that our rights can override the law

and sometimes other people's rights. When the Hon. Dr Arthur Chesterfield-Evans stated that sex workers in fact have an educational role in decreasing sexually transmitted diseases [STDs], I felt compelled to make the point that less sexual activity and fewer sex workers will result in less STD.

**The Hon. Ian Cohen:** And that has worked in the past, too!

**The Hon. Dr PETER WONG:** It is the reality, is it not?

**The Hon. Ian Cohen:** Why? If no-one had sex, no-one would have STDs.

**The Hon. Dr PETER WONG:** If a person did not have sex, where would that person contract an STD, may I ask—from a dream?

**The Hon. Dr Arthur Chesterfield-Evans:** It will not solve the problem.

**The Hon. Dr PETER WONG:** It does not, but this is the reality. If you do not accept facts, you should not be arguing.

**The Hon. Ian Cohen:** You do not accept the fact that the whole world is having sex.

**The Hon. Dr PETER WONG:** How does one get an STD if one does not have sex?

**The ACTING-PRESIDENT:** Order! I ask members to have some consideration for the Hansard staff. Interjections, which are disorderly, make it very difficult for them to report the proceedings.

**The Hon. Dr PETER WONG:** No-one can deny that prostitution is a major cause of STDs. Is the Hon. Dr Arthur Chesterfield-Evans going to deny that too? I am glad he is not a doctor. He pretends he is a medical expert, yet he knows nothing. How would he know? He should ask the Hon. Dr Brian Pezzutti.

**The Hon. Dr Arthur Chesterfield-Evans:** What's the difference between us and Asia? Asia has many sex workers.

**The Hon. Dr PETER WONG:** The Hon. Dr Arthur Chesterfield-Evans is making many comments on medical matters that he knows nothing about.

**The Hon. Dr Arthur Chesterfield-Evans:** Australia has one of the best records for controlling STD.

**The Hon. Dr PETER WONG:** That is right, exactly, but the Hon. Dr Arthur Chesterfield-Evans cannot deny that prostitution is the major cause of STDs. How can the honourable member deny that?

**The Hon. Ian Cohen:** You are very narrow minded.

**The Hon. Dr PETER WONG:** I am speaking of facts, not narrow mindedness. The Hon. Ian Cohen knows nothing about medicine. In fact, he knows nothing about this issue whatsoever. He is the one who is narrow minded.

**The Hon. Ian Cohen:** I have a wealth of experience.

**The Hon. Dr PETER WONG:** He thinks only of his own rights, not other people's rights.

**The ACTING-PRESIDENT:** Order! The Hon. Dr Peter Wong will address the content of the bill.

**The Hon. Dr PETER WONG:** In fact it is also true that a properly run massage parlour promotes safe sexual practices.

**The Hon. Ian Cohen:** I agree with that.

**The Hon. Dr PETER WONG:** That is exactly right. I am trying to tell you the same thing.

**The Hon. Ian Cohen:** That prevents the spread of disease.

**The Hon. Dr PETER WONG:** That is exactly right. I am trying to tell you that I am not supporting Reverend the Hon. Fred Nile. I am stating a fact: Prostitution is the major cause of STDs. The Hon. Dr Arthur Chesterfield-Evans cannot deny that fact.

**The Hon. Dr Arthur Chesterfield-Evans:** Are you comparing it with other sex or are you comparing it with no sex?

**The ACTING-PRESIDENT:** Order! That sort of discussion is for the Committee stage. The Hon. Dr Peter Wong has the call, and he should not be interrupted.

**The Hon. Dr PETER WONG:** We have spoken about the rights of sex workers, but what about the rights of the people who live in the same block of units or surrounding houses? One of the major concerns expressed by residents is that councils either do not or cannot act on their complaints.

**The Hon. Ian Cohen:** That is because there is a lack of education on all those issues.

**The Hon. Dr PETER WONG:** We are here to make laws, not break them. I hope the Hon. Ian Cohen understands that. In conclusion, I should like to tell the House a simple story. For many years I looked after Chinese migrants, many of whom lived in the Ashfield area. At one time I was told that a few Asian girls were living in Australia illegally and working as prostitutes. They were being controlled by the criminal element. We reported it to the police, but they could not do anything because there was no evidence. We reported it to the council, but the council refused to act. Finally, we reported it to the immigration department. Those girls, who are now in prison, also have rights. What do the Greens and the Democrats think of that?

**The Hon. JOHN HATZISTERGOS** [2.52 a.m.], in reply: I thank honourable members for their contributions, and I commend the bill to the House.

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

**The House divided.**

**Ayes, 27**

Ms Burnswoods  
Mr Colless  
Mr Costa  
Mr Dyer  
Mr Egan  
Ms Fazio  
Mrs Forsythe  
Mr Gallacher  
Miss Gardiner  
Mr Gay

Mr Harwin  
Mr Hatzistergos  
Mr Moppett  
Mrs Nile  
Reverend Nile  
Mr Obeid  
Mr Pearce  
Dr Pezzutti  
Mr Ryan  
Mr Samios

Mrs Sham-Ho  
Ms Tebbutt  
Mr Tsang  
Mr West  
Dr Wong

*Tellers,*  
Mr Jobling  
Mr Primrose

**Noes, 4**

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

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**The Hon. IAN COHEN:** I seek leave to move a motion to suspend standing orders to allow the moving of a motion forthwith for an instruction to the Committee of the Whole in relation to the bill.

**Leave not granted.**

**In Committee**

**Clauses 1 to 3 agreed to.**

**Schedule 1**

**The Hon. IAN COHEN** [3.03 a.m.]: I move Greens amendment No. 1:

No. 1 Page 3. Insert before line 3:

[1] **Section 2 Definitions**

Omit "Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution." from the definition of *brothel*.

Insert instead "Premises constitute a brothel only if they are used by more than two prostitutes for the purposes of prostitution.".

**The Hon. John Hatzistergos**: Point of order: Mr Chairman—

**The TEMPORARY CHAIRMAN (The Hon. Henry Tsang)**: Order! The amendment is out of order because the Hon. Ian Cohen was not granted leave to move his motion to suspend standing orders.

**Reverend the Hon. FRED NILE** [3.04 a.m.]: I move Christian Democratic Party amendment No. 1:

No. 1 Page 3, schedule 1. Insert after line 7:

[2] **Section 16A**

Insert after section 16:

**16A Local council may prohibit brothels**

- (1) This section applies to any brothel, whether established or operating legally or illegally.
- (2) A local council may, by order served on the owner or occupier of premises that are a brothel and that are situated within the area of the council, prohibit the owner or occupier from using or allowing the use of the premises for the purpose of a brothel.
- (3) An order of a local council under this section has the same effect as an order of the Land and Environment Court under section 17, and may be enforced accordingly.
- (4) An order (or purported order) of a local council under this section may not be appealed against, reviewed, quashed or called into question by the Land and Environment Court or any other court or tribunal (whether on an issue of fact, law or otherwise).
- (5) A judgment or order that, but for this section, might be given or made in order to grant relief or remedy (whether by order in the nature of prohibition, certiorari or mandamus, by injunction or declaration or otherwise) may not be given or made in relation to an order (or purported order) of a local council under this section.

**The TEMPORARY CHAIRMAN**: Order! I rule the amendment out of order for the same reason as the amendment of the Hon. Ian Cohen was ruled out of order.

**The Hon. IAN COHEN** [3.05 a.m.]: I move Greens amendment No. 2:

No. 2 Page 3, proposed section 17A. Insert after line 20:

However, the presence in any premises of articles or equipment that facilitate or encourage safe sex practices does not constitute evidence of any kind that the premises are used as a brothel.

[*Interruption*]

Despite the frivolous interjections of the Hon. Dr Brian Pezzutti, important matters need to be ventilated and put on the record. The bill seeks to amend the Disorderly Houses Act to specify that the Land and Environment Court may rely on circumstantial evidence to establish that premises are being used as a brothel. The Greens are particularly concerned about the fifth category of circumstantial evidence that a court can rely on, namely, "which is evidence of the arrangement of the premises or of the furniture, equipment or articles in



the premises that is consistent with the use of the premises for prostitution". By doing this the Government may impede the best practices in occupational health and safety standards in the sex industry. In particular, reference to equipment and articles could discourage condom use and the availability of literature that encourages the use of condoms or prophylactics or informs individuals about the early detection of sexually transmitted diseases.

Allowing these items to be used as evidence discourages their availability and use. Thus, it works directly against the best interests of workers, their clients and society as a whole. The Greens amendment specifically excludes articles or equipment that facilitate or encourage safe sex practices being used as circumstantial evidence. Put simply, this is not a moral option but a health option for workers in the industry, for clients who go to these workers and for the whole of society.

**The Hon. DON HARWIN** [3.07 a.m.]: As I foreshadowed in my contribution to the second reading debate, the Opposition shares many of the concerns raised by the Hon. Ian Cohen. We are concerned to ensure, no matter what happens, that even in illegal brothels nothing is done to impede important HIV and other sexually transmittable disease prevention measures. That is important and is something that the Opposition supports. However, I am advised that the Government will not support the amendment. Therefore, the Opposition has decided to try to find a middle ground and a form of words that best describes what the Hon. Ian Cohen is trying to achieve in terms of prevention of sexually transmitted diseases and looking after the occupational health and safety of sex workers. Therefore, I move the following amendment to Greens amendment No. 2:

No. 1 In GRNS Amendment No. 2 omit "does not constitute" from proposed section 17A (2). Insert instead "does not of itself constitute".

I am advised that that form of words may be in a acceptable to the Government. Hopefully, therefore, some allowances will be able to be made to meet the concerns that have been raised with the Opposition about an amendment to the bill.

**The Hon. JOHN HATZISTERGOS** [3.10 a.m.]: The Government will accept the Opposition amendment to the Greens amendment. We wish to make it quite clear, contrary to some of the alarmist statements that have been made, that condom and safe sex literature will not of itself be enough to be probative evidence.

**The Hon. IAN COHEN** [3.10 a.m.]: Appreciating that the Greens amendment will fail, I thank the Hon. Don Harwin for making representations and putting forward the Opposition amendment, which at least goes a great part of the way towards achieving the desired end on this matter.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.11 a.m.]: I do not know where the amendment of the amendment came from. I do not know whether it came from the Hon. Don Harwin. I congratulate the Hon. Ian Cohen on his amendment. I had responded to a number of people who had written to me asking what was the solution other than increasing the number of sex workers allowed to work in private, home-based premises. However, it is important that the amendment has been won.

**Reverend the Hon. FRED NILE** [3.11 a.m.]: I pose the question, if premises have all these sorts of things in them, what would they be if not brothels?

**The Hon. John Jobling**: A chemist shop.

**Reverend the Hon. FRED NILE**: No-one would declare a chemist shop to be a brothel. What would such premises be?

**Amendment of amendment agreed to.**

**Amendment as amended agreed to.**

**The Hon. IAN COHEN** [3.12 a.m.]: I move Greens amendment No. 3:

No. 3 Page 4, lines 3-5. Omit all words on those lines.

As I have mentioned previously, the fifth category of circumstantial evidence as specified in the note will discourage best practice occupational health and safety. This amendment simply deletes this category. I commend the amendment.

**The Hon. DON HARWIN** [3.13 a.m.]: This amendment is not acceptable to the Opposition. As the Committee has just agreed to an amendment that deals with real concerns about health matters, surely nothing in the provision could now be objected to—if one is to preserve the policy of the bill, which seeks to do something about the problem of illegal brothels. Therefore the Opposition will not support the amendment.

**The Hon. JOHN HATZISTERGOS** [3.14 a.m.]: The Government will not support the amendment.

**Amendment negatived.**

**Schedule 1 as amended agreed to.**

**Title agreed to.**

**Bill reported from Committee with an amendment and report adopted.**

### **Third Reading**

**The Hon. JOHN HATZISTERGOS** [3.15 a.m.]: I move:

That this bill be now read a third time.

**The Hon. IAN COHEN** [3.15 a.m.]: As I was not able to put Greens amendment No. 1, and having opposed the bill, I would like at the third reading to put on the record that I wished to move that important amendment, which was:

No. 1 Page 3. Insert before line 3:

**[1] Section 2 Definitions**

Omit "Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution." from the definition of *brothel*.

Insert instead "Premises constitute a brothel only if they are used by more than two prostitutes for the purposes of prostitution.".

Currently, the definition of "brothel" in the Act is defined as follows:

Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

This means that for the purposes of the Act there is no differentiation—

**The Hon. Duncan Gay:** Point of order: It is outside the leave of the third reading of the bill to speak to an amendment that was ruled to be outside the leave of the bill.

**The Hon. John Jobling:** On the point of order: I concur with the remarks of my colleague the Deputy Leader of the Opposition. The question before the House is that the bill be read a third time, not an amendment that was ruled to be outside the leave of the bill.

**The Hon. Michael Egan:** On the point of order: The Deputy Leader of the Opposition and the Opposition Whip are right, but I have a feeling that we might deal with matters more quickly if we allow the honourable member to make his speech.

**The ACTING-PRESIDENT:** Order! The remarks of the Hon. Ian Cohen are outside the leave of the bill.

**Motion agreed to.**

**Bill read a third time.**

### **COURTS LEGISLATION AMENDMENT (CIVIL JURIES) BILL**

#### **Second Reading**

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.18 a.m.]: I move:

That this bill be now read a second time.

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

**Leave granted.**

The purpose of this bill is to amend the District Court Act 1973 and the Supreme Court Act 1970 to provide that civil actions (with the exception of defamation actions) are to be tried without a jury, unless the Court otherwise orders.

It is important to stress at the outset that the bill will not affect the availability of juries in criminal trials which determine questions of innocence and guilt. Rather, it refers to civil actions which are essentially private disputes.

Currently, both the *Supreme Court Act 1970* and the *District Court Act 1973* have a general rule which provides that civil proceedings will be held without a jury unless the Court orders otherwise. However, the general rule is subject to a number of exceptions.

Both Acts make specific provision about when a jury is to be used in particular types of cases. For example, in the Supreme and District Courts, certain aspects of workers compensation matters are to be heard without a jury. In the Supreme Court, defamation matters are to be heard with a jury.

In practice, however, proceedings can be tried with a jury in a large range of civil matters if a party applies to have the matter heard in this way and pays the appropriate fee. If there is no such application, then the trial will be held without a jury.

The *Supreme Court Act* and the *District Court Act* confer a broad discretion on the courts to dispense with civil juries. The discretion was considered by the Court of Appeal in *Pambula District Hospital v Herriman* (1988) 14 NSWLR 387. The Court held that while the discretion is wide, it must be exercised for a particular reason. Therefore, the Court can not apply criteria, such as brevity, efficiency and costs, universally to all jury trials without considering any specific application of those criteria to the facts of a particular case.

I turn now to the reasons for the bill.

Traditionally, the rationale for jury trials have been said to include:

- that civil juries provide a balanced view based on the life experiences and knowledge of a cross section of the community. This contrasts with a judge sitting alone who may not have been exposed to the same range of experiences;
- that the jury system enables members of the community to participate in the justice system; and
- that the community's views are reflected in the jury's verdict.

Against this, it should be noted that there are disadvantages to jury trials. The Government recognises that jury trials can be more costly and time-consuming than trials before a judge alone. If resources are diverted to a long jury trial then other cases may have to wait longer to come before the court.

For example, in the District Court, parties often estimate that a case involving a jury will last three or four times longer than a case without a jury. Additional sitting time is allocated at the call-over on this basis. If, as occurs in a large majority of these cases, the case settles on the first day of the hearing, the court list is disrupted. Whilst back-up matters can be listed to fill the vacated spot, it would be a better use of court resources and would be less disruptive to other parties if this did not occur. When jury trials do proceed, they can take up a significant amount of court time.

A balance must be struck so that all litigants have fair and reasonable access to the courts.

The amendments before the House are not intended to abolish civil juries. The Government recognises that it is appropriate to have some matters determined by a jury. However, it is intended that these amendments will restrict the use of civil juries to those cases where a special need is demonstrated. Jury trials can raise particular issues for the court system and the public. Parties should not be able to requisition a jury trial for tactical advantage. Rather, they should only be permitted to requisition a jury if there is a special need for a jury in their particular case.

At present, judges are not able to consider the usual problems of delay and inconvenience which are inherent in jury trials when deciding whether or not to dispense with a jury. Instead, the judge must consider factors that are singular and specific to that trial. The amendments are intended to enable a judge to consider the full range of factors when determining whether there is a special need for a jury trial.

Another significant issue for the community in relation to civil juries is the fact that members of the public are being required to attend court and assist in the adjudication of private disputes between other members of the community. Whilst this means that the community is involved in and supporting the judicial process, it should also be recognised that jurors can be inconvenienced and can suffer financial loss as a result of their jury service. It can also be disruptive for jurors if they are summoned for jury duty and are sent home or discharged on the first day of a trial because the matter has settled. Whilst this also occurs with criminal trials, the issues at stake in a criminal trial are quite different as a person's guilt or innocence is at stake and the Crown is bringing the action rather than a private individual. Juror inconvenience is less important a factor in this instance.

The legislation seeks to strike a balance between various competing priorities and to simplify the law with respect to civil juries. Courts need to be able to efficiently manage their lists and resources, lawyers should not be able to requisition jury trials simply to gain a tactical advantage, jurors (who are performing a valuable community service) should be inconvenienced as little as possible while parties with a special need for a jury trial should be able to have their matters heard before a jury.

It is intended that the amendments will require parties to demonstrate to the Court that there is a special need for a jury trial before resources are allocated to the matter. The bill is not prescriptive about the "special need" that must be shown as it is intended that each case will be considered on its merits. There will be some areas where it is likely that judicial officers would continue to employ a jury. These could include actions where there might be questions of fraud or major issues of credibility involving either the plaintiff or defendant.

Once the bill is enacted, I will suggest to the Chief Justice and the Chief Judge that they issue an appropriate practice direction about the matters which the court would consider when deciding that a "special need" exists.

The bill retains the status quo with respect to defamation in the Supreme Court Act for the time being. My Department is currently consulting with the Australian Press Council about the Council's proposals for reform in this area. Any proposals for legislative reform will be considered after this process has been completed.

I turn now to the bill. Schedule 1 amends the District Court Act. Item [1] inserts proposed section 76A, which provides that an action in the District Court is to be tried without a jury unless the Court otherwise orders. The Court may make an order for a trial with a jury if any party to the action files a requisition for such a trial and pays the prescribed fee and the Court is satisfied there is a special need for a jury trial. Items [2], [3] and [4] make consequential changes. Item [5] deals with savings and transitional matters. Actions that have commenced which have not been finally determined before the amendments commence, will be dealt with under the current provisions of the District Court Act. Item [6] makes a consequential amendment.

Schedule 2 amends the Supreme Court Act. Item [1] omits sections 85 to 89 and substitutes new sections 85 to 87. New section 85 provides that proceedings in any Division of the Supreme Court (other than proceedings in respect of defamation) are to be tried without a jury unless the Court otherwise orders. The Court may make an order for a trial with a jury if any party to the action files a requisition for such a trial and pays the prescribed fee and the Court is satisfied there is a special need for a jury trial. New section 86 preserves the present position with respect to defamation proceedings. Item [2] deals with savings and transitional matters. Actions that have commenced which have not been finally determined before the amendments commence, will be dealt with under the current provisions of the Supreme Court Act. Item [3] makes a consequential amendment.

In conclusion, the reforms proposed by this bill are expected to assist the Courts to better manage their lists and to assist in reducing delays and waiting times in the Courts. They are but one of a series of measures which demonstrate this Government's commitment to continual improvement of the New South Wales justice system.

I commend the bill to the House.

**The Hon. JAMES SAMIOS** [3.18 a.m.]: The purpose of this bill is to provide that civil actions, except defamation actions, may be tried without a jury unless the court otherwise orders. Higher courts already have a general rule regarding the hearing of civil matters without a jury, but it is subject to a number of exemptions. The proposed amendments will restrict the use of civil juries to those cases where a special need for a jury is demonstrated.

The legislation will not affect criminal actions; it relates only to civil actions, essentially private disputes. It is noted that jury trials are more costly and time consuming, and the bill will assist in reducing court delays. It is true that juries provide for a broad cross-section of community views, experience and opinions, as reflected in the jury's verdict, in contrast to a judge sitting alone. As stated, the purpose of the bill is to provide that civil actions, except defamation actions, may be tried without a jury unless the court otherwise orders, for the reasons I have already stated. Accordingly, the Coalition will not oppose the bill.

**The Hon. HELEN SHAM-HO** [3.20 a.m.]: I am pleased to speak to the Courts Legislation Amendment (Civil Juries) Bill, which amends the District Court Act 1973 and the Supreme Court Act 1970 to provide that civil actions heard in the District Court and the Supreme Court, with the exception of defamation hearings, are to be tried without a jury unless the court otherwise orders. Juries will still be available in civil actions, and will be granted upon request if a court is satisfied that there is a special need for one. I emphasise that the bill does not in any way affect the use of juries in criminal trials.

The object of the bill is to enhance the efficiency of the District Court and the Supreme Court in New South Wales. As the Attorney General, the Hon. Bob Debus, said in his second reading speech in the Legislative Assembly, jury trials can be more costly and time consuming than trials presided over by judges acting alone. I assume that the Attorney General is alluding to the delays associated with striking a jury, hearing opening and concluding addresses by counsel, as well as the judge's summing up, and the tendency of lawyers to call expert witnesses just for show during jury trials.

I have no doubt that all of those things add enormously to court time and cost. As someone with a legal background, I have a particular interest in this bill. When I worked as a solicitor in Cabramatta some years ago I represented people in jury trials, and I always believed that they worked rather well. Regardless of my personal views, there are many arguments both for and against the use of juries in civil trials. Those in favour of abolishing or modifying the jury system in civil actions argue that jurors should be inconvenienced as little as possible, that jury trials lack uniformity of judgment, and that juries sometimes award excessive and unreasonable damages.

As honourable members may recall, one recent example of a jury getting it spectacularly wrong was in the Hogan case, which was heard in the Supreme Court earlier this year. In that case a jury of two men and two women found that the strapping of Dr Paul Hogan at a Catholic school 17 years ago was a wrongful act, and

consequently awarded Dr Hogan \$3 million in damages—an enormous sum of money. The decision was overturned by the Court of Appeal in October this year. I agree that there is a need to facilitate the quick and cost-effective disposal of proceedings in the District Court and the Supreme Court but I also believe that juries play a fundamental role in our civil justice system.

The right to choose to be judged by a jury of one's peers is a very historic right that has been around since the days of the Norman conquest. While it is not necessary for me to discuss the history of juries, let me just say that a jury system has frequently been held to be one of the most important foundations of the democratic way of life. That is because jury trials enable citizens to directly participate in the administration of justice. They also ensure that the law is applied in a way that reflects current community values, which for me is the most important aspect of the civil jury system.

Juries keep the courts in touch with the real world. They are, in effect, the voice of the community. Judges in this State are overwhelmingly male, products of the private education system, and middle aged. With no disrespect to judges—I am on good terms with quite a few—it is a fact that judges often hand down decisions that are simply out of touch with community standards and expectations. One should consider the public outrage that followed the relatively lenient sentences handed down by judges in some of the recent group sexual assault cases in this State. The community's dissatisfaction with the decisions was so fierce that it prompted this Government to introduce legislation to increase the maximum penalty for gang sexual assault from 20 years to life imprisonment.

It is also worth noting that due to the unpredictability of jury trials, civil cases tried before a jury are statistically more likely to be settled than cases tried before a judge. Jurors come from very different social and economic backgrounds and have had very different life experiences, all of which remain a mystery to the parties in the case. Civil trials heard before judges, on the other hand, are much easier to predict because a judge's previous decisions ensure that his or her bias and predilections are well known in legal circles, at least. I am also aware that there are far fewer appeals against jury awards than there are against decisions handed down by judges, because the decision of a jury is far more difficult to challenge on appeal. While juries do not have to give reasons for the decision, judges do. As honourable members who are familiar with the law know, the reasoning of a judge frequently provides the grounds for a party to appeal.

I am pleased that this bill does not abolish the use of juries in all civil actions. If it did, I can assure honourable members that I would not support it. I firmly believe that there will always be certain cases or circumstances in which a jury trial is necessary and appropriate. The bill recognises that fact by allowing a court to order a jury trial if the court is satisfied that there is a special need for one. I am alarmed that the bill provides no indication of the sorts of cases that might constitute a special need. While I appreciate that it is reasonable to assume that whether a special need exists will depend on the individual circumstances of the case, the fact remains that the term "special need" is not a judicially recognised term.

To my mind, a much broader, fairer and more certain test for determining whether a jury trial in a civil action should be ordered is when a court is satisfied that a jury is required "in the interests of justice". The phrase "in the interests of justice" is a judicially recognised term with which all courts would be familiar. It was referred to by Chief Justice Nicholson in 1989 in the Family Court case of *Chapman v Jansen* and more recently by His Honour Justice O'Keefe in *O'Hare v Director of Public Prosecutions*, which was handed down in the Supreme Court last year.

For those reasons I foreshadow that I will move an amendment in Committee to provide that a court may order a jury trial in a civil action if the court is satisfied that a jury is required in the interests of justice. I will further explain in Committee that that amendment is supported by both the Law Society and the Bar Association—and I believe also by the Government. It will provide greater clarity and certainty as to when a jury trial will be granted by a court without interfering with the exercise of judicial discretion.

I add that this will also bring New South Wales into line with the Commonwealth courts, where there is also a presumption against a jury. According to the Federal Court of Australia Act 1976, a civil trial is to be held without a jury, although a judge may order one where "the ends of justice appear to render it expedient to do so". In conclusion, I am of the view that the Courts Legislation Amendment (Civil Juries) Bill strikes an appropriate balance between the need for courts to more efficiently manage their lists and resources, and the need to ensure that jury trials in civil actions are still available in certain cases. I commend the bill to the House.

**The Hon. RICHARD JONES** [3.28 a.m.]: The bill provides that civil actions, with the exception of defamation actions, are to be tried without a jury, unless the court orders otherwise. Currently in New South

Wales a jury trial is available on the requisition of any party in all personal injury claims except motor accident claims. The jury requisition fee is \$681, with a daily retention fee of \$310 thereafter. In the case of a corporation it is \$1,362 and a daily retention fee of \$620.

In the second reading debate in the other place the Attorney General said there are disadvantages to jury trials: they can be more costly and time consuming than trials before a judge alone, and therefore other cases may have to wait longer to come before the court. Yesterday retiring Supreme Court Justice Bill Priestly spoke of this very matter in his farewell ceremony at the New South Wales Supreme Court. He said:

The reason always given in support of this trend is that it is cheaper and more efficient to do away with juries ... Even if this be so, of which I am not convinced, the reason misses the main point of juries—the spreading of power in the community. The more widely spread the exercise of power is, the healthier, it seems to me, to be. However I simply watch the trend go the wrong way.

Certain metropolitan newspapers—the arbiters of informed and impartial opinion that they are—have professed outrage at civil juries. Perhaps there is a level of self-interest there; perhaps they are hoping to see civil juries abolished in defamation cases also—it might save them some money. In any case, this media claims it is absurd that civil juries are allowed to award millions of dollars in damages. They argue that putting a price on trauma or body parts is an arbitrary exercise and should be left to judges, not juries. Judges should be allowed to set civil damages, to stop excessive awards and ensure consistency.

Many arguments can be advanced on this point. First, the decision to award millions of dollars in damages—this was the outcome in the Hogan case—was successfully appealed and the sum was reduced very substantially. Secondly, if it is problematic, this issue can be addressed by alternative means, such as via the amendment that the Hon. Peter Breen may move in Committee. I believe it will allow for juries in civil cases, provided their involvement is limited to deciding questions of fact. It is interesting that defamation actions are precluded from this legislation. The Attorney General has said that changes to the use of juries in civil cases should be made because:

... a balance must be struck so that all litigants have fair and reasonable access to the courts.

Everyone, except those suing for defamation:

... should only be permitted to requisition a jury if there is a special need for jury in their particular case.

In its submission of 10 October 2001 to the New South Wales Attorney General regarding possible reforms to State defamation laws, the Australian Press Council advocated that a jury should be involved in the whole case except the final assessment of damages. Decisions on imputations should come at the start of the trial. The jury should hear the input on those matters, retire and make a decision, then return immediately to hear evidence if any matters require a defence. The legislation should direct the court on the principles and guidelines on amounts to be awarded in line with personal injury practice. When the plaintiff succeeds, the judge, rather than the jury, should decide the amount of damages. This is the Australian Press Council's position. It is a well-known toothless tiger, but perhaps it will get what it wants in this matter.

The discretion of the court to decide what constitutes a special need is currently enabled in England, where the courts have generally declined to allow trial by jury. Neither the bill in its present form nor the Attorney General's second reading speech provides an adequate indication of the likely definition of "special need". Therefore, the exact implications of the bill are sketchy. The Attorney General foreshadowed that when the bill is enacted he will write to the Chief Justice and the Chief Judge suggesting that they issue an appropriate practice direction about the matters the court will consider when deciding that a special need exists. What constitutes a special need will depend very much on the particular circumstances of each case. I note that the Hon. Helen Sham-Ho has proposed an amendment to replace "special need" with "in the interests of justice", which is a judicially recognised term. That amendment is helpful as it would bring greater clarity and certainty to the process.

The legal profession claims that this legislation was introduced with no public forewarning, and it seeks to remove the right to a civil jury that citizens in this community have had since the beginning of the last century. In the *Sydney Morning Herald* of 16 February this year, the Attorney General promised to consult "widely and thoroughly with the community". The legal profession claims that this consultation has not eventuated. In correspondence to me, solicitors T. D. Kelly and Co. said that the proposal for this legislation seemed to be based upon the premise that a jury is a luxury that the community can no longer extend to the

quadriplegic child or brain-damaged accident victim, but which must quite rightly be preserved for the alleged murderer, rapist or thief—or, in the civil sphere, for the Ray Martins or Rene Rivkins. In 1922, English Judge Lord Atkin, who was cited by President Kirby of the Court of Appeal, said:

Trial by jury... is an essential principle of our law. It has been the bulwark of liberty, the shield of the poor from the oppression of the rich and powerful. Anyone who knows the history of our law knows that many of the liberties of the subject were originally established and are maintained by the verdicts of juries in civil cases.

It has been argued that the Government's proposition that jury trials make a greater demand on the courts' time is factually incorrect. A verdict by a jury is far more difficult to challenge on appeal than the verdict of a judge alone. Thus a civil trial is much more likely to settle, and settle at the outset. In addition, the proposition that the court list is disrupted when a jury trial settles on the morning of the hearing is incorrect. It is relatively common knowledge that the Supreme Court and the District Court list more cases than there are judges to hear them on any given day.

Over the past decade there has been such a significant decline in the number of jury actions that, for some years, neither the Supreme Court nor the District Court has published the number of civil jury trials within those courts in their annual returns. Indeed, it appears as though the matter is not of real concern to either court. Civil juries are presently available in all States except South Australia and Western Australia and in the Australian Capital Territory. In a speech to the Australian Legal Convention in 1999 the Chief Justice of the High Court of Australia said that juries, including civil juries, represented an important point of contact between the administration of justice and the community. Sir Murray McInerney, a retired judge of the Supreme Court, said:

...the jury system... is of the essence of democracy and a much needed safeguard of freedom.

When the then Coalition Government tried to do the same thing in 1994 in the Courts Legislation (Civil Procedure) Amendment Bill, the Labor Opposition in this place said:

...in formal terms the object of the bill is to provide that civil proceedings in the Supreme Court and District Court are to be tried without a jury unless the court orders that the proceedings or any issues of fact in the proceedings should be tried with a jury in the interests of justice. In practical terms such an order will be virtually impossible to obtain from any judge. Any practicing solicitor or barrister would know that to be the case. For all practical purposes this is the abolition of civil juries."

The bill it was referring to provides for exactly what this bill will provide for if the Hon. Helen Sham-Ho's amendment is accepted—that is, if it is "in the interests of justice" to do so, the court may order an action to be tried by jury. It is extraordinary—but not unusual—that the Labor Party has reversed its position so dramatically on this issue. We should listen to the message that juries send to the community that injuries suffered on the street, in the school and in the workplace are unacceptable and that damages should be awarded.

The Government is quite happy to listen to the community when it believes it is calling for the provision of harsher penalties for rapists and murderers. It should equally be prepared to listen to and support the community in the form of a civil jury when it seeks to determine whether certain behaviour is unacceptable and whether it is worthy of economic recompense. It is wrong in principle for Parliament to delegate to the court an undefined and unlimited discretion to decide when a case may be tried by a jury. An important civil right is being significantly curtailed. In truth, it is being effectively destroyed in practice.

**The Hon. IAN COHEN** [3.37 a.m.]: The Greens oppose the Courts Legislation Amendment (Civil Juries) Bill, primarily because we do not support the reduction or abolition of the jury system. The bill amends the District Court Act and the Supreme Court Act to provide that civil actions, with the exception of defamation matters, are to be tried without a jury unless the court orders otherwise. In his second reading speech, the Attorney General said the reason for this change is that jury trials can be more costly and time consuming than trials heard before a judge alone.

The right of a party in a civil action to request a jury has existed in New South Wales since 1844. This is the right of ordinary citizens in civil litigation to have their cases determined by their peers. The Greens have strong faith in the jury system as an alternative to judicial decision making. As we all know, jurors are selected from the community and come from all walks of life and all occupations and have very different life experiences. On the other hand, although we respect their profession, skills and expertise, many judges do not take the same approach to issues as an ordinary person. They have also had specific education and training.

A number of analyses have been carried out of judges and their backgrounds. Many are male, white and from privileged and higher socioeconomic backgrounds. Information provided by the Australian Bureau of Statistics reveals that, according to the latest statistics available, of 193 judges in New South Wales, 169 are male and 24 female—88 per cent male and 12 per cent female. As to ethnic backgrounds, 91 per cent of judges are Australian born, 4 per cent are born in England, 2 per cent are born in Oceania and Antarctica, and 3 per cent are born in Europe and the former Union of Soviet Socialist Republics. Judges clearly do not reflect the gender or ethnic mixes of our community. In contrast, jury members reflect the general community: they have very different backgrounds, education, training, occupations and life experiences.

As the Law Society points out, juries inject community attitudes and perceptions based on real-life experience into the court process that might otherwise be academic. They bring balance to proceedings that might otherwise be determined at trial before a judge sitting alone, and their balance and combined experience enables them to accept a wide variety of views. They are a microcosm of the democratic society in our court system. The involvement of citizens and their values in the administration of justice is crucial in a democratic system. Just recently, Justice Bill Priestly, speaking at a ceremony marking his retirement after 18 years in the Court of Appeal, addressed the issue of the reduction in the use of juries in civil trials. He disagreed with that statement and said this of juries:

The reason always given in support of this trend is that it is cheaper and more efficient to do away with juries. Even if this be so, of which I am not convinced, the reason misses the main point of juries: THE SPREADING OF POWER WITHIN THE COMMUNITY.

The more widely spread the exercise of legal power is, the healthier it seems to me to be. However, I simply watch the trend go the wrong way without being able to do anything about it.

An important point is made in a letter from T. D. Kelly, a personal injury law specialist. He states:

At all events the proposal rests upon the proposition that a jury trial is a luxury that the community can no longer extend to the quadriplegic child or the brain damaged accident victim, but which must be preserved for the murderer, rapist and the thief and in the civil sphere, for the Mr Rene Rivkins of this community.

Why is it that the jury system is being retained for defamation but not for the cases mentioned by Kelly, that is, children with quadriplegia? Kelly spells out in his letter a powerful statement by English Judge Lord Atkin in 1922:

Trial by jury, except in the very limited classes of cases assigned to the Chancery Court, is an essential principle of our law. It has been the bulwark of liberty, the shield of the poor from the oppression of the rich and powerful. Anyone who knows the history of our law knows that many of the liberties of the subject were originally established and are maintained by the verdicts of juries in civil cases.

On the issue of saving time and expense, commentators have pointed out that abolishing civil juries may have the reverse effect. It has been put to the Greens that civil cases due to be tried by a jury are far more likely to settle than cases before a judge alone. This is because of the unpredictability of a decision by members of the community selected at random compared to the decision of a judge whose previous decisions ensure that his or her predilections are well known. Juries are a potent force for settlement in civil cases. Without them it is argued that many more cases would be contested. According to Mr Kelly, the issue of civil jury abolition was canvassed back in 1991-92.

Mr Kelly analysed 19 cases in which his firm was involved. The cases were conducted in the then long matters list of the Supreme Court over a period of approximately four years. Eleven of the cases were listed before juries and eight without juries. Of the 11 jury cases 10 settled on or before the first day. The remaining case ran for 10 days and an application was made to the Court of Appeal for a retrial on the basis that the trial judge had misdirected the jury. The average time of each of the 11 trials was fewer than two days. The eight non-jury cases were all fought out to the end, with an average hearing time of about six days, and in every one there was an appeal to the Court of Appeal. The Greens oppose this bill.

**The Hon. Doug Moppett:** Can't you arrive at a party position on this?

**Ms LEE RHIANNON** [3.43 a.m.]: We have, actually. It is called co-operation. What possessed the Attorney General to introduce this bill? Has he lost his humanity or his sense of justice? Someone should tell him that history will not be kind to him. Does he want to be remembered as the man who axed juries? Many of us wondered whether he had his heart in this task. I wonder how the Attorney General's job is playing out? He already has had to turn into law the tabloid tribulations of his Premier. Imagine thinking that one has reached



one's zenith as a lawmaker of the State and all one ends up doing is overseeing a raft of backward law and order legislation. The Attorney General does his job and now he is getting rid of juries. That is a crime in itself. One hundred and fifty years ago the law creating juries was passed in the Legislative Council. I have that legislation in this Chamber, which is entitled "An Act to amend the Laws regulating Trial by Jury in New South Wales in so far as they relate to the Trial of Civil Causes". That document states:

Be it enacted by His Excellency the Governor of the New South Wales with the advice and consent of the Legislative Council...

That is the legislation that we are about to get rid of. I am sure that the major parties will do their usual thing. Mr Richard Windeyer introduced the bill in this House in 1844. What I found refreshing about this bit of history was the fact that I could see progressive developments occurring—the Government of the day progressed issues for the people of this State. Mr Richard Windeyer, quite an interesting man who was interested in law reform, said:

Trial by assessors was to be replaced by trial by a jury of four special jurors, with a decision by a majority of three to be acceptable if unanimity were not reached after six hours. His model was an Act that Alfred Stephen had introduced in Van Diemen's Land.

I got the feeling that people were trying to move things on. They were trying to ensure that we had a progressive State—something that these major parties would not have a clue about as they wind back laws one after the other. That is what we saw tonight. We made life miserable for sex workers just when things were getting better. We also dealt tonight with sniffer dogs, and now juries are going out the door. I referred to that bit of history so that honourable members are aware of what we are doing through this legislation. Is the Attorney General committed to axing juries? In the Legislative Assembly the Attorney General argued the case for the axing of juries, but was he convinced by his own argument, or was he just doing what he was told to do by Cabinet or by the likes of the Treasurer or the Premier? In May this year, when Mr Debus spoke at the bench and bar dinner, he stated:

But, historically speaking, a free press, an independent legal system and a democratic system of parliamentary government are rare and precious phenomena; and to have all three coexist at one time is rare indeed.

Later, during drinks in pleasant surroundings he said:

It is my own view that it is the role of the attorney general to speak up in defence of the judiciary when criticism crosses a legitimate line.

Finally, he said:

... being the attorney general as the guardian of the administration of justice.

The Attorney General did not refer in that speech to juries, but the Greens believe that the Attorney General cannot argue that he is committed to justice in May and then in December swan into Parliament and abolish juries. Is the Attorney General on the case? Does he know what he is doing? That is actually a relevant question. A few weeks ago the Attorney General introduced the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill. When the Greens and a few angry Internet companies pointed out the real intent of that law, the bill was shunted off to a committee. I congratulate the Government and the Attorney General on taking that action.

We all make mistakes. That mistake was realised and the legislation was sent off to a committee. But how did the Attorney General let either of these pieces of legislation through this Parliament? Has the Attorney General forgotten the important principle of retaining juries as a check on the judiciary? At present, civil jury trials are available in all States of Australia, except South Australia and Western Australia. The Greens have received—and I imagine other honourable members have received—comments from a number of people who share our concerns about what is happening tonight. Peter Semmler, QC, wrote to us and said:

The proposed Bill reflects a distrust by the present government of the judgment of ordinary people. If enacted, it will mean that the common sense and values of the community will no longer be factored into the decision making process in those civil actions where juries are now permitted.

The Greens received an interesting article by Sir Murray McInerney, a retired judge of the Supreme Court, who states:

While the jury system comes in for regular public criticism, one is never given specific evidence of its alleged deficiencies.

In my opinion it is of the essence of democracy and a much-needed safeguard of freedom.

Then we had some useful comments from the Australian Plaintiff Lawyers Association:

Juries represent a cross-section of our community. Judges on the other hand are often of a similar age, background, education and move in restricted social circles—

sounds a bit like some people here—

They are less able to contribute broader community values to the determination of a civil case.

I noted also the comments of Justice Bill Priestley. Other speakers referred to his comments that were delivered at his leaving ceremony at the New South Wales Supreme Court. It is important to remember who was present at that ceremony. There was a particularly red face: the Attorney General was present. Imagine poor Mr Debus going along thinking it would be a pleasant function and there was Justice Priestley dressing down a piece of his legislation. Justice Priestley read the following important comment:

The more widely spread the exercise of power is, the healthier it seems to me to be.

That is the essence of why the Greens support the jury system. That system involves the community in the process of justice. It spreads the delivery of justice wider, which makes for a more democratic process and a fairer system of justice. It would be sad if this Attorney General were remembered as the Attorney General who undermined and effectively destroyed the jury system.

**The Hon. John Hatzistergos:** Did they have juries in the Soviet Union?

**Ms LEE RHIANNON:** Can you not come up with something original? The Hon. John Hatzistergos asked whether there were juries in the Soviet Union. Your Treasurer has made that comment for three years; can you not come up with something original?

**The Hon. Michael Egan:** Were there?

**Ms LEE RHIANNON:** Yes, there were. I might say also that Mr Turner, a previous member of this House, wrote a book about juries being sacred.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.51 a.m.]: The Australian Democrats will not support this bill as we do not believe there is a necessity for reforms to the New South Wales District Court and Supreme Court system. This bill is another example of what the Carr Australian Labor Party [ALP] Government has become: another Liberal party—ALP. It is interesting to note that when in opposition the ALP actually opposed a similar bill, the Courts Legislation (Civil Procedure) Amendment Bill in 1994. On 11 May 1994 the Hon. Ron Dyer had given an overview of the arguments against the abolition of civil juries in his contribution to the second reading debate. At the conclusion of his speech on that bill he said:

Civil juries remain a valuable institution in our society. The Opposition will vote at the second read to resist the abolition of civil juries to the extent proposed in the bill.

How things have changed! At least the Coalition admits where it stands on issues. At least Liberals are consistent in applying Liberal values, whatever that means. Members of the crossbench can predict where the Liberal-National Coalition stands on issues, unlike the ALP, which says one thing but goes ahead and does the other. On that same day the Hon. Elisabeth Kirkby spoke on the bill and said:

When the Court Legislation (Civil Procedures) Amendment Bill was debated in this House in May 1990, on behalf of the Australian Democrats I opposed the clauses of legislation that would have abolished civil juries in certain cases.

They were her comments in 1994 and I now oppose a similar proposal in 2001. So, the Australian Democrats policy does not blow with the wind. The Hon. Elisabeth Kirkby said further:

At that time, the legislation was significantly amended. However, in August 1991 the Attorney General of the day introduced a second bill in order to resubmit the measures that had been deleted prior to the election, and the bill subsequently lapsed. The Attorney General is resubmitting the same bill for the third time. The position of the Australian Democrats has not changed, just as the position of the Government has not changed. The object of this bill is to provide that civil proceedings in the Supreme and District Courts are to be tried without a jury unless the court orders that the proceedings or any issues of fact in the proceedings be tried with a jury in the interests of justice - the Hon. R. D. Dyer pointed out earlier in his remarks how extremely unlikely that is to occur - or the proceedings arise from a cause of action based on fraud, defamation, malicious prosecution or false imprisonment.

The Government put forward a number of reasons for its proposal. They were to simplify the rules that govern the use of civil juries. The reason that was dwelt on at some length by the Hon. J. M. Samios was to reduce delays in the jury list... I should like to point out that there is irrefutable evidence that a jury trial does not take longer than a trial before a judge. It was argued in support of the 1990 bill that jury cases consume more hearing time than trials before a judge. No statistical evidence has ever been advanced to support this claim... It cannot be said that a jury trial takes longer than a trial before a judge. Before this assertion can have any validity, one would have to average the total length of all jury trials and contrast the result with the average of the total length of all cases decided by judges ...

Only 3 per cent of court time in New South Wales is occupied by civil jury hearings, and the Government could argue that such minimal use necessitates reform. However, the Government argues that the costs and time delays to the court system in New South Wales caused by juries is the reason behind the bill. These excuses are also used by Liberals. The Minister said in his second reading speech in the other House:

Traditionally the rationale for jury trials has been said to include that civil juries provide a balanced view based on the life experiences and knowledge of a cross-section of the community—this contrasts with a judge sitting alone who may not have been exposed to the same range of experiences; that the jury system enables members of the community to participate in the justice system; and that the community's views are reflected in the jury's verdict. Against this, it should be noted that there are disadvantages to jury trials. The Government recognises that jury trials can be more costly and time consuming than trials before a judge alone. If resources are diverted to a long jury trial then other cases may have to wait longer to come before the court.

The Democrats acknowledge that in some civil cases that deal with very technical aspects of law or a specialised field juries may be necessary. The presiding judge must usually explain and direct a jury on matters of law so that they can at least understand the issues of the action. Civil juries are already restricted by filing and jury retention fees, and in actions heard before the Supreme Court the court can exercise its discretion to refuse an application for a jury trial except in certain circumstances, and the District Court exercises the same discretion in all matters.

The Law Society of New South Wales is concerned that this bill would change the Supreme Court and District Court Acts to reduce discretion of those courts in all matters. Courts would be allowed to have jury trials only if satisfied of the special needs for one. The Australian Plaintiff Lawyers Association stated in a letter dated 4 December that it was opposed to the restriction or interference with the rights to trial by jury in civil matters. It said:

The Government will effectively abolish the use of juries in civil cases if this Bill is passed. We recommend that you oppose the Bill and the undemocratic approach the Government is taking to the abolition of people's entrenched rights. The community is unaware of what they will lose if this Bill is passed.

A letter from T. D. Kelly & Co, solicitors, dated 3 December stated:

The Carr government has no mandate for this measure. It seeks to abolish on what amounts to 24 hours notice a right that has existed in all our community for the last century.

No forewarning of such a measure was given by the Carr government before the last election or at all.

The real and intended effect of the Bill is to abolish civil juries.

What has hitherto been a right can now if the Bill is enacted be had only at the absolute discretion of a judge if a "special need" is first demonstrated. On past experience it is reasonable to assume that discretion will never be exercised in favour of the party seeking a jury, and that no successful appeal will ever be mounted against such refusal ...

The proposition advanced in the second reading speech that jury trials make a greater demand on the Courts' time than non jury trials is factually incorrect.

The central flaw of this argument is that it takes no account of the difference statistical likelihood of settlement between jury and non jury cases ....

The further proposition that the Court list is disrupted when a jury trial settles on the morning of hearing is also factually incorrect.

The Supreme Court and the District Court have many decades listed more cases than there are judges to hear on any given day. This is done on the statistically sound assumption that many of these cases will settle. This has always been the position for both jury cases and non jury cases.

The Court list is never in practice disrupted by cases settling. It is greatly disrupted when they do not settle and other cases (in what is known as the "swingers list") are thus not reached and have to be rescheduled for ... months hence.

An article by Joseph Kerr in the *Sydney Morning Herald* of 12 December entitled "Judge deplores the diminished role of civil juries" stated:

One of the state's most senior judges criticised the weakening of civil juries—in front of the man who is legislating to severely restrict their use.

Speaking at a ceremony marking his retirement after 18 years ... Justice Bill Priestley said he disagreed with a reduction in the use of juries.

The article quoted him as saying:

The reason always given in support of this trend is that it is cheaper and more efficient to do away with juries. Even if this be so, of which I am not convinced, the reason misses the main point of juries: the spreading of power within the community.

The more widely spread the exercise of legal power is, the healthier it seems to me to be. However, I simply watch the trend go the wrong way without being able to do anything about it.

In a submission Barry Hall, QC, said:

The Number of Civil Jury Trials is Statistically Insignificant—The settlement rate is the most Important factor in the disposal of Civil Cases.

He gave a number of statistics to illustrate his point, and said:

These figures reveal that the most important factor in the disposition of cases is the rate at which they are settled. In the District Court in the year 2000, 52 % of cases had been completed within one year, and 88% of cases had been completed within two years. It could not be said, at the present time, that there is any pressing "delay" in the District Court, nor, in relation to Civil proceedings, in the Supreme Court.

The current state of the Civil list in the Supreme and District Court does not justify the present Bill.

Trial by Civil Jury is an Important Individual Right, and Provides an Opportunity for Choice which should not be Curtailed and is a Safeguard against future Judicial Oppression.

As previously indicated, the number of Civil Jury Trials is no longer significant statistically. Moreover, given the recent amendments which curtailed the right of injured workers to bring civil actions for damages, the number of jury actions in relation to personal injury will continue to decline in the years that lie ahead.

But the right to choose trial before a civil jury is a very important safeguard against judicial oppression...

It is wrong, in principle, for the Parliament to delegate to the Court an undefined and unlimited discretion to decide when a case may be tried by a Jury.

I seek leave to table the submission of Barry Hall to the former police Minister entitled "An outline of the reasons why members of the bar are opposed to the bill".

**Leave granted.**

**Document tabled.**

Basically there is no need for this bill. We believe that if it is passed it will adversely affect justice in New South Wales. I propose to move some amendments which will, I hope, go some way towards remedying the situation.

**The Hon. JOHN HATZISTERGOS** [4.04 a.m.], in reply: I commend the bill to the House.

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

**The House divided.**

**Ayes, 25**

Ms Burnswoods  
Mr Colless  
Mr Costa  
Mr Dyer  
Mr Egan  
Ms Fazio  
Mrs Forsythe  
Mr Gallacher  
Miss Gardiner

Mr Gay  
Mr Harwin  
Mr Hatzistergos  
Mr Moppett  
Mr Obeid  
Mr Pearce  
Dr Pezzutti  
Mr Ryan  
Mr Samios

Mrs Sham-Ho  
Ms Tebbutt  
Mr Tsang  
Mr West  
Dr Wong  
*Tellers,*  
Mr Jobling  
Mr Primrose

**Noes, 6**

Mr R. S. L. Jones  
Mrs Nile  
Reverend Nile  
Ms Rhiannon  
*Tellers,*  
Dr Chesterfield-Evans  
Mr Cohen

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clauses 1 to 4 agreed to.**

**Schedules 1 and 2**

**The Hon. HELEN SHAM-HO** [4.12 a.m.], by leave: I move my amendments Nos 1 to 4 in globo:

No. 1 Page 3, schedule 1 [1], line 5. Omit all words on that line. Insert instead:

**76A Action to be tried without jury unless jury required in interests of justice**

No. 2 Page 3, schedule 1 [1], lines 15 and 16. Omit all words on those lines. Insert instead:

(b) the Court is satisfied that the interests of justice require that the action be tried by a jury.

No. 3 Page 5, schedule 2 [1], line 5. Omit all words on that line. Insert instead:

**85 Trial without jury unless jury required in interests of justice**

No. 4 Page 5, schedule 2 [1], lines 14 and 15. Omit all words on those lines. Insert instead:

(b) the Court is satisfied that the interests of justice require a trial by jury in the proceedings.

These amendments seek to amend the test by which courts will determine whether a jury trial in a civil action may be ordered, from when the court is satisfied that there is a special need for a jury to when the court is satisfied that a jury is required in the interests of justice. These amendments were raised with and supported by the Law Society and the Bar Association. That is significant because the bill currently provides no indication of what constitutes a "special need". While it is reasonable to assume that whether a special need exists will depend on the circumstances of the case, the term "special need" is not a judicially recognised term. However, the term "in the interests of justice" is a judicially recognised term. It also provides a broader and fairer test than the term "special need". In the family law case of *Chapman v Jansen* in 1989, at paragraph 32 Chief Justice Nicholson said:

I do not think that [the interests of justice] is a concept which Courts should find difficult to apply. The interests of justice will vary from case to case, and I think that, in general, in considering applications under this legislation, a broad approach is to be preferred.

Further, in *O'Hare v Director of Public Prosecutions* [2000] New South Wales Supreme Court, at paragraph 49 Justice O'Keefe said:

[The] interests of justice ... [may] involve considerations relating not only to the interests of the defendant in the committal proceedings, but also to those of the complainant and perhaps others as well. Whilst ensuring that the need for fairness of the trial is at the forefront of the inquiry, there may be other factors in particular cases which would need to be considered as well.

At paragraph 51 His Honour said:

In this regard relevance to the interests of justice will involve a consideration of the interests of the defendant and the interests of the complainant as well as wider considerations of justice.

These amendments will provide greater clarity and certainty as to when a jury trial may be granted by the court, while not interfering with the exercise of judicial discretion. I wanted to place on the record the reason for these amendments, because people will read *Hansard* for that reason.

**The Hon. JOHN HATZISTERGOS** [4.16 a.m.]: The Government does not oppose these amendments.

**The Hon. JAMES SAMIOS** [4.16 a.m.]: The Opposition does not oppose these amendments.

**Amendments agreed to.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [4.17 a.m.]: I move Australian Democrats amendment No. 1:

No. 1 Page 3, schedule 1 [1], proposed section 76A, lines 5-18. Omit all words on those lines. Insert instead:

**76A Actions to be tried with jury**

- (1) An action on a common law claim in which there are issues of fact in relation to any of the following must be tried with a jury:
  - (a) a charge of fraud against a party, or
  - (b) a claim in respect of defamation, malicious prosecution or false imprisonment.
- (2) Any other action is to be tried without a jury, unless the Court orders otherwise.
- (3) The Court must order that an action referred to in subsection (2) be tried with a jury if a party to the action:
  - (a) files, within the prescribed time, a requisition for trial with a jury, and
  - (b) pays the prescribed fee.
- (4) Despite subsection (3), the Court may order that an action be tried without a jury if:
  - (a) after a party to the action has filed a requisition for a trial with a jury, another party to the action applies, within the prescribed time, for an order that the action be tried without a jury, and
  - (b) the Court is satisfied that there is a special need for the action to be tried without a jury.
- (5) A fee paid under this section is to be treated as costs in the action, unless the Court orders otherwise.

**The Hon. John Hatzistergos:** Point of order: This amendment is out of order because it is a direct negative.

**The TEMPORARY CHAIRMAN (The Hon. Henry Tsang):** Order! I rule the amendment out of order.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [4.17 a.m.], by leave: I move Australian Democrats amendments Nos 2 and 3 in globo:

No. 2 Page 3, schedule 1 [3], line 30. Omit all words on that line. Insert instead:

- (b) questions of fact in relation to which the Court is satisfied that there is a special need for the questions to be tried without a jury.

No. 3 Page 4, schedule 1 [6], lines 13-18. Omit all words on those lines. Insert instead:

The amendments made by the *Courts Legislation Amendment (Civil Juries) Act 2001* do not apply to actions commenced, but not finally completed, before the commencement of that Act.

The bill proposes, in the substituted section 77 (5) (a), that the statutory defences raised by section 63 (5) or section 64 (1) (c) of the Workers Compensation Act 1926 and section 151Z of the Workers Compensation Act 1987 will be decided by the trial judge, as presently provided in existing section 89 (3) of the Supreme Court Act 1987. Amendment No. 2 substitutes a new section 77 (5) (b), which, consistent with the provisions of the amended section 76A (4) (b), as substituted by subsection (1) of new section 76A, as outlined in my amendment No. 1, entitles the judge to order that certain questions of fact be tried without a jury if there is a special need for such issues of fact to be resolved without the jury.

Traditionally, cases falling within that test have been cases involving the prolonged examination of documents or scientific investigation containing evidence by many expert witnesses, or cases when local investigation—that is, inspection of the area in relation to which the action is brought—is required and it would not be convenient to deal with those matters before a jury of laymen. For example, see the provisions of section 89 (2) of the existing Supreme Court Act 1970. Amendment No. 3 makes clear that the bill will not apply to actions commenced but not finally completed before the commencement of the amending Act. I commend the amendments to the Committee.

**The Hon. JOHN HATZISTERGOS** [4.18 a.m.]: The amendments are ludicrous, and the Government opposes them.

**Amendments negatived.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [4.19 a.m.]: I do not move Australian Democrat amendment No. 5 because the Hon. Helen Sham-Ho's amendment was agreed to. By leave, I move Australian Democrats amendments Nos 4, 6 and 7 in globo:

No. 4 Page 5, schedule 2 [1], proposed section 85, line 8. Omit "may". Insert instead "must".

No. 6 Page 5, schedule 2 [1], proposed section 85, line 27. Omit all words on that line. Insert instead:

- (b) questions of fact in relation to which the Court is satisfied there is a special need for the questions to be tried without a jury.

No. 7 Page 7, schedule 2 [3], lines 7-12. Omit all words on those lines. Insert instead:

The amendments made by the *Courts Legislation Amendment (Civil Juries) Act 2001* do not apply to proceedings commenced, but not finally completed, before the commencement of that Act.

The effect of amendment No. 4 will be to provide that the court does not have a discretion but must order that an action be tried by a jury if a party to the proceedings files the relevant requisition for trial with the jury, pursuant to the amended section 82 (2). Amendment No. 6 amends section 85 (5) (b) of the Supreme Court Act so that it contains a similar provision to that contained in section 77 (5) (b) of the District Court, as set out in paragraph 2 of the proposed amendment. The aim of the amendment is to insert a consistent requirement that trial by jury may only be dispensed with if there is a special need to do so. Amendment No. 7 is similar to that effected by paragraph 3 of these amendments. It ensures that the Act, as amended, will not apply to actions that have been commenced but have not been finally completed before the commencement of the amending Act.

**The Hon. JOHN HATZISTERGOS** [4.22 a.m.]: These amendments are equally ludicrous and the Government opposes them.

**Amendments negatived.**

**Schedules 1 and 2 as amended agreed to.**

**Title agreed to.**

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

**BUSINESS OF THE HOUSE**

**Postponement of Business**

**Government Business Order of the Day No. 9 postponed on motion by the Hon. M. R. Egan.**

**PARLIAMENTARY ETHICS ADVISER**

**Consideration of the Legislative Assembly's message of 5 December.**

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

That:

- (1) this House directs the President to join with the Speaker to make arrangements for the appointment of Mr Ian Dickson as Parliamentary Ethics Adviser, on a part-time basis, on such terms and conditions as may be agreed from the period beginning 1 December 2001,

- (2) the function of the Parliamentary Ethics Adviser shall be to advise any member of Parliament, when asked to do so by that member, on ethical issues concerning the exercise of his or her role as a member of Parliament (including the use of entitlements and potential conflicts of interest),
- (3) the Parliamentary Ethics Adviser is to be guided in giving this advice by any Code of Conduct or other guidelines adopted by the House (whether pursuant to the Independent Commission Against Corruption Act or otherwise),
- (4) the Parliamentary Ethics Adviser's role does not include the giving of legal advice,
- (5) the Parliamentary Ethics Adviser shall be required to keep records of advice given and the factual information upon which it is based,
- (6) the Parliamentary Ethics Adviser shall be under a duty to maintain the confidentiality of information provided to him in that role and the advice given, but that the Parliamentary Ethics Adviser may make advice public if the member who requested the advice gives permission for it to be made public,
- (7) this House shall only call for the production of records of the Parliamentary Ethics Adviser if the member to which the records relate has sought to rely on the advice of the Parliamentary Ethics Adviser or has given permission for the records to be produced to the House,
- (8) the Parliamentary Ethics Adviser is to meet with the Standing Ethics Committee of each House annually,
- (9) the Parliamentary Ethics Adviser shall be required to report to the Parliament prior to the end of his annual term on the number of ethical matters raised with him, the number of members who sought his advice, the amount of time spent in the course of his duties and the number of times advice was given,
- (10) the Parliamentary Ethics Adviser may report to the Parliament from time to time on any problems arising from the determinations of the Parliamentary Remuneration Tribunal that have given rise to requests for ethics advice and proposals to address these problems.

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

## **SPECIAL ADJOURNMENT**

### **Seasonal Felicitations**

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [4.24 a.m.]: I move:

That this House at its rising this day do adjourn until Tuesday 26 February 2002 at 2.30 p.m., unless the President, or if the President is unable to act on account of illness or other cause, the Chairman of Committees, prior to that date, by a communication addressed to each member of the House, fixes an alternative day or hour of meeting.

I want to take this opportunity to express, on behalf of all my ministerial and Government colleagues, my sincerest thanks to everyone in the Parliament who has worked so hard and tirelessly this year. I thank John Evans, the Clerk of the Parliaments, who today celebrates his thirtieth year in the job. I thank also the other Clerks and staff of the Legislative Council for their unfailing dedication to duty. Mr Evans, of course, was the subject not so long ago of one of the most brilliant speeches ever delivered in this Chamber during a mock sitting when that now legendary figure, Michael the Tax Cutter, put his own fine history of public service on the record. I note with pleasure that that historic speech was punctuated by cries of, "No more tax cuts, please." However, modesty prevents me from continuing in that vein.

To all staff of the Legislative Council, your commitment to the House is most appreciated. I also wish to record my gratitude to the parliamentary attendants, the Hansard staff, the staff of the Parliamentary Library, the Parliamentary Dining Room and catering staff, and all staff members in the Chamber who provide a first-rate service. To my own ministerial staff, who are without peer but are vastly overworked and underpaid, I say, "Thank you for your loyalty, dedication, commitment and friendship, and for writing this speech." As you have written, I am indeed blessed to have around me such a fine team of efficient, talented and committed individuals. It could be said that they take their lead from me.

As the parliamentary year draws to a close, I thought I would share with you some interesting House statistics. On this, our fifty-second sitting day in this year, I inform honourable members that, as at 4.00 p.m. today, the upper House has sat for a total of 333 hours and 21 minutes. How that time has flown! During that time, close to 400 questions have been placed on notice. They will all be answered, of course, with the attention to detail for which Ministers in this House are now famous. More than 1,220 questions without notice have been asked during question time. I have been most impressed by the way Ministers have followed my example, always sticking to the answer and never, ever deviating into petty political antics or personal abuse. I am sure every dumbcluck on the other side of the House will agree with me.



In addition, 127 bills have passed through the House. Some of them have slipped through almost unnoticed, so I would like honourable members to try to recall some of them. I refer, of course, to the WorkCover legislation, as well as our determined efforts to give the Auditor-General as much power as we could. Our police powers legislation means that the streets are now so much safer for innocent sniffer dogs to go about their law-abiding business. There were 18 committee references, including two to the Standing Committee on Social Issues, two to the Standing Committee on Parliament Privilege and Ethics and two to the Standing Committee on State Development representing an increase of three on last year's figures.

It has been a productive year in the House, from the passage of the first bill for the year, the Corporations (Commonwealth Powers) Bill, to the last bill we dealt with tonight, and all honourable members have shown diligence and enthusiasm for the cause. Although not necessarily agreeing with many of the rantings and ravings of some members in this Chamber this year, I will however acknowledge that freedom of speech is a vital component of a democracy such as ours. If I had my way, of course, ranting and raving would be allowed only on this side of the House, and only by very senior members. In closing, I wish all members a safe and happy Christmas, and I look forward to seeing all of you next year for what will be a very—

**The Hon. John Jobling:** You are just trying to rally the troops.

**The Hon. MICHAEL EGAN:** No, I am not. I actually hope to see you all back again.

**The Hon. Elaine Nile:** All the nutters too?

**The Hon. MICHAEL EGAN:** All the nutters too, but I would be glad if some of them voluntarily chose not to come back.

**The Hon. Dr Brian Pezzutti:** So you are not pleased to have them back?

**The Hon. MICHAEL EGAN:** No, I want them back. It is all part of democracy.

**The Hon. John Ryan:** We are all invited to your place for breakfast!

**The Hon. MICHAEL EGAN:** I think breakfast will be served in about 25 minutes. Certainly I want to see you all back here healthy and safe next year and I hope you will have a very happy, enjoyable and peaceful Christmas with your families, friends and loved ones. I extend that wish not only to members of this House but to all staff of the New South Wales Parliament and to our own staff. Happy Christmas.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [4.28 a.m.]: Three months ago this week the world watched in horror as the lives of about 5,000 citizens were taken during the worst single day of terrorism in history. Today, as we approach the festive season, it is time to take stock and reflect on the tragedies that have come our way throughout the year. It is time to pay tribute to the people who help us, as members of Parliament, to represent the citizens of this great State and remember the reason why we have put our trust as a society in the democratic process and the Westminster system. It is a system that ensures that forces such as the Taliban do not take from each and every citizen of our country the freedom of expression, the freedom of education for all children, not merely males, and the freedom to dress and act individually.

Tonight I express my deepest thanks and appreciation to my colleagues on this side of the House. To the Deputy Leader of the Opposition, Duncan Gay, and the Deputy Leader of the Liberal Party, Jim Samios, I express my thanks for their support, friendship and hard work during the past year. I also place on record my personal thanks to John Jobling and Doug Moppett for their dedication in this House. To all my parliamentary colleagues in this House I express my appreciation for their hard work and dedication throughout the past 12 months.

I also thank all members of the crossbench—this was obviously written before today—who have worked with the Coalition as we continue to make the Government accountable to the people of this State. I also express my best wishes to the Leader of the Government, Ministers and all Government members. I wish them all a well-earned rest during the Christmas break. On behalf of the Opposition I express our appreciation to the Clerk of the Parliaments, John Evans, for his invaluable advice. I also thank his deputy, Lynn Lovelock, and other members of the Legislative Council office staff, committee secretariat and team of Legislative Council attendants, without whom this Chamber would simply not operate. Our thanks also go to all the managers and staff of the many departments within Parliament for their assistance and support throughout the year. In particular I thank the Hansard team for their patience. I know that this House is particularly trying at times and they do an absolutely fantastic job.

Finally, I thank all Coalition Legislative Council staff members for their dedication and hard work throughout the year. Being in opposition is never easy, as members opposite will find out soon enough. Being the only staff member to a member of the Opposition is even harder. Michael Costa, former head of the Labor Council, would be very interested in my final point, a serious occupational health and safety issue. I look forward to his support in the new year on the issue of paid relief staff for our staff members when they are sick or on leave. That is particularly important for Government and Opposition members, who are currently entitled to only one member of staff. I look forward to Government support in addressing the issue next year. My best wishes to all members: a very merry Christmas and a safe and happy New Year.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [4.31 a.m.]: First, Mr Acting-President, I thank you for your work as Chairman of Committees and the fair way in which you have exercised your duties. I know that you are enjoying a rest as Acting-President: the work is not nearly as hard as that of Chairman of Committees, as any chairman of committees knows. Christmas came early to the National Party. And are we happy! I thank the people of Tamworth and the Labor Party. I thank my parliamentary colleagues in the National Party—Jenny, Doug and Rick—for the work they have done. I thank our staff, Ben Hamilton and Jessica Main. I thank Michael Gallacher and my Liberal colleagues. Without your help we would not be on the ascendancy as we are at the moment. I also pay tribute to Michael Egan and his mob. May the man have a well-earned rest, because he is looking a little excited. I thank the crossbench for equally annoying me and amazing me on occasions. The crossbench gave me my second Christmas present today. Every one of them voted for a motion I moved. This was a first in my time here, and it was appreciated.

**The Hon. Amanda Fazio:** It will never happen again.

**The Hon. DUNCAN GAY:** I hope it happens again. It is Christmas time, and I congratulate the Hon. Lee Rhiannon, who seems to get stronger and noisier after dinner.

**Ms Lee Rhiannon:** Be original. That is your problem. You should say things yourself.

**The Hon. DUNCAN GAY:** It was my own. I mention John Evans, who has served the Parliament for 30 years today, Lynn Lovelock, Warren Cahill, Mike Wilkinson and David Blunt for the work they do, their advice and their good humour. I thank Ian, Maurice, Mike, Charles, Lucy, John, Katrina, Erin and all the attendants. I should not have started naming them because I knew I would miss one. I nearly forgot George. I thank the security people for their work, Pat in printing, and Judith and the Hansard team. We look forward to a Carr-free State in 16 months.

**Amendment by the Hon. John Jobling agreed to:**

That the motion be amended by the addition, at the end, of the following paragraphs:

2. Notwithstanding the above, the President, on receipt of a request by a majority of the members of the House, that the House meet at an earlier time, must by communication addressed to each member of the House, fix a day and hour of meeting in accordance with the request.
3. For the purpose of paragraph (2), a request by the Leader of any recognised party or group is to be deemed to be a request by each member of that party or group.
4. A request may be made to the President by delivery to the Clerk of the House, who must notify the President as soon as practicable.
5. In the event of the absence of the President, the Clerk must notify the Deputy-President, or if the Deputy-President be absent any one of the Temporary Chairmen of Committees, who must summon the House on behalf of the President, in accordance with this resolution.

**Motion as amended agreed to.**

**ADJOURNMENT**

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [4.35 a.m.]: I move:

That this House do now adjourn.

## TIBETAN HUMAN RIGHTS

**The Hon. RICHARD JONES** [4.35 a.m.]: On 10 December 2001 the Tibetan Government in Exile issued a paper called "Height of Darkness: Chinese Colonialism on the World's Roof". It was a response to the white paper issued by the People's Republic of China issued on a November 2001 called "Tibet's March Towards Modernisation". In the Chinese paper, there is no mention of the Cultural Revolution, nor the atrocities committed on the Tibetan people, including the 1.2 million people who have died as a direct result of the Chinese Communist occupation of Tibet. Mr Acting-President, I seek leave to have my speech incorporated in *Hansard*.

### Leave not granted.

The main argument of the Chinese white paper was that Chinese rule in Tibet has made that country into a modern society. It argued that modernisation has brought great benefit to the Tibetan people. It does not mention that the real measure of whether a society is judged "modern" is whether the people who make up that particular society have the right to freely exercise their collective will, whether they enjoy democratic rights and possess the ability to exercise these rights. These are the defining measures of a truly modern society. The modernisation of Tibet to benefit the people of Tibet is simply not happening. China extracts the resources of its colonial periphery and, in turn, exports its excess population onto the vast empty lands of the native Tibetans.

In a presentation at Parliament House earlier this year the Tibetan Government in Exile representative in Canberra, Mr Chope Paljor Tsering, noted that the Tibetan people measure the quality of their life by how happy they are. This simple and beautiful truth is often forgotten. That is a great pity. The real reason for the "modernising" of Tibet that Communist China has carried out lies more in maintaining the stability of its own regime, and erroneously believing such actions will address China's own political and social problems that accompany unprecedented economic development. China considers its military invasion and occupation of Tibet as the "liberation" of Tibet and society from "medieval feudal serfdom" and "slavery". Yet in terms of social mobility and wealth distribution independent Tibet compared favourably with most Asian countries before the time it was invaded.

The Tibetan polity before the Chinese occupation was not theocratic, as China would have us believe. Theocracy implies ruling in the name of God. The Tibetan polity, on the other hand, is referred to as *choesi-sungdrel*, which means a political system based on the Buddhist tenets of compassion, moral integrity and equality. His Holiness the Dalai Lama is head of both the spiritual and secular administration, and it should be noted that the Tibetans' current struggle under the Dalai Lama is not to resurrect the old Tibetan social system, as Beijing claims. Chinese attempts to personalise the Tibetan issue to make it hinge upon the Dalai Lama's status is a subterfuge to mask the main issue—namely, the Tibetan people's enduring national struggle for their right to determine their own destiny.

Currently Tibetans have little or no say in running their affairs. All the decisions of administration are taken by the Chinese Communist Party. The influx of Chinese increases. Hundreds of Tibetans are imprisoned for their political or religious activities. Torture is regularly carried out on detainees. Tibetans are rarely permitted to leave the country, and education and medicine are severely neglected. The current policy of intensifying repression and increasing development activities, which is enforced by the Communist regime, is wrong policy. Everyone in the world, except the leadership in Beijing, considers those policies to be short-sighted. They will prove to be disastrous in the long run. Melvyn C. Goldstein, a Tibetan scholar, in an article on Tibet in the January-February 1998 issue of *Foreign Affairs* wrote:

Many Chinese experts and moderates question whether the current policy will produce the long-term stability that China wants in Tibet because it is exacerbating the alienation of Tibetans, even young ones, intensifying their feelings of... political hopelessness, and inculcating the idea that Tibetans' nationalist aspirations cannot be met so long as Tibet is part of the People's Republic of China.

The words of Joseph Conrad in *Heart of Darkness* were quoted at the beginning of the "Tibetan Government in Exile" paper. These words are quite poignant:

They were conquerors, and for that you want only brute force - nothing to boast of, when you have it, since your strength is just an accident arising from the weakness of others... The conquest of the earth, which mostly means the taking away from those who have a different complexion or slightly flatter noses than ourselves, is not a pretty thing when you look into it too much.

As convener of the New South Wales parliamentary group Parliamentarians Supporting a Free Tibet, I am deeply committed to the Tibetan peoples' struggle for peace, justice and freedom.

***LIVING ARRANGEMENTS: A GUIDE TO SUPPORTED ACCOMMODATION FOR PEOPLE WITH DISABILITIES***

**The Hon. JAN BURNSWOODS** [4.40 a.m.]: Yesterday I had the great pleasure of launching a book that has been published by the Community Services Commission entitled *Living Arrangements: A guide to supported accommodation for people with disabilities*. I warmly congratulate the Community Services Commission, Robert Fitzgerald, Anita Tang and all who played a role in preparing the book. As I said when I launched the book in my capacity as Chair of the Standing Committee on Social Issues in relation to that committee's ongoing inquiry into disability services, the stage has now been reached at which almost everybody agrees that the move into supported community living for people who have a disability is an incredibly important step in their journeys through life, and one of almost a totally bipartisan policy.

We are also all aware that such a move is often very traumatic for people with a disability and for their family. All too often it takes place against a background of acute family crisis. Certainly honourable members who have taken part in the Standing Committee on Social Issues inquiries are aware of the extent of the crisis that often confronts families, particularly elderly parents who have been caring for a person with a disability at home, but also those who confront a crisis in relation to the devolution of the large institutions in which many people with disabilities have lived for many years. One of the problems that often faces families in an atmosphere of crisis—particularly in a period when the precise provision of alternative services within the community means a great deal of change and variety, and therefore choice—is the difficulty of those families and people with a disability in understanding the range of choices.

In this context, I believe that the guide is very useful indeed. It is clearly written, and it is designed to spell out the range of choices available and exactly what they mean. It details a number of different categories of supported accommodation within the community; it describes clearly the various terms, which the community sometimes regard as jargon; and it suggests the kinds of questions that should be asked by people with a disability, their families and their advocates. I believe that the guide provides a great deal of help. One of the comments I quoted today was taken from the preface to the guide, written by Robert Fitzgerald, which noted that for too long family members have had to muddle through with limited information and assistance to help them consider all the options and issues. I guess that sums up the problem, and the guide goes a long way towards providing the solution.

The guide is particularly important given the considerably increased amount of money that the New South Wales Government has made available in the last two budgets for people with disabilities and for supported accommodation. Certainly there have been difficulties for the Department of Ageing, Disability and Home Care Department, as it is now known, and its predecessors—the Ageing and Disability Department and the Department of Community Services—in rolling out that funding. At the forum—which took place all morning and part of the afternoon, and involved many of the service providers, the families, the advocates and a range of key players—it was evident that whilst some of those moves to community living have been slow to start, the pace of change is now increasing considerably.

For example, in relation to the devolution of some children's homes, while only a few people may have moved in the first few months—in the case of one home, a number of people will leave this month—by about Easter next year the majority of people will have moved into various forms of community accommodation. Government funding has made this whole process possible. While there have been some bureaucratic and other delays, I was pleased to hear this morning that many of those delays are now being overcome. I congratulate all the people with disabilities who played a role in that process.

**BISHOP GEOFFREY JARRETT LITURGICAL RECEPTION**

**The Hon. Dr BRIAN PEZZUTTI** [4.45 a.m.]: On Wednesday I had the privilege of taking leave from the House to attend the solemn mass and liturgical reception for the fifth bishop of Lismore, the Most Reverend Geoffrey H. Jarrett, together with Cardinal Clancy, Metropolitan Archbishop Pell, Bishop Matthys from Armidale, Bishop Walker from Broken Bay, Bishop Ingram from Wollongong, Bishop Dougherty from Bathurst and Bishop Murray from Wollongong. Bishop Jarrett was born in Kyneton, Victoria, on 1 December 1937, the elder son of Hilton and Beatrice Jarrett. He was educated at Trinity Grammar School in Melbourne. After working in London for several years in the film unit of BBC Television, he commenced studies in 1959 for the Anglican ministry at the Theological College at Nottinghamshire. On returning to Australia he worked as an Anglican priest in Queensland, until he was received into the Catholic Church in 1965.

Archbishop Guilford Young accepted him as a candidate for the archdiocese of Hobart, and his further studies were entrusted to the Marist Fathers at their seminary at Toongabbie. Bishop Jarrett was ordained priest by Archbishop Young in Sydney in 1970. His appointments included assistant priest at St Mary's Cathedral, Hobart, and other appointments in Hobart. During his 30 years ministry in Tasmania Bishop Jarrett was involved in ecumenical affairs as a member of the Executive of the Tasmania Council of Churches and for more than 20 years as a member of its Faith and Order Commission. On 9 December 2000 he was appointed Coadjutor Bishop of Lismore by Pope John Paul II and his Episcopal ordination took place at St Carthage's Cathedral on 22 February 2001. Bishop Jarrett became the fifth Bishop of Lismore on 1 December when the Holy Father accepted the resignation of Bishop John Satterthwaite. John Satterthwaite was present when Bishop Jarrett took the chair.

The dioceses of Grafton was established in 1887. In 1900 it became the diocese of Lismore and the Episcopal seat was transferred from Grafton to Lismore. The first Bishop was Bishop Jeremiah Doyle, who had been a priest of the diocese of Armidale and parish priest of Lismore. He died in 1909 and was succeeded by Bishop John Carroll, who was a priest of the Archdiocese of Sydney. Bishop Carroll died in 1949 and was succeeded by his Coadjutor, Bishop Patrick Farrelly. Bishop Patrick Farrelly, consecrated in 1941, was a priest of the diocese of Lismore and was born in Lismore. At the time of his appointment he was the parish priest of Bellingen. When he retired he had served as Bishop of Lismore for almost 40 years. He was succeeded by John Satterthwaite, an Australian-born priest of the diocese of Armidale who had been appointed Coadjutor Bishop in 1969. He became the fourth Bishop of Lismore on 1 September 1971 and has now served 30 full years in the service of the people.

I would also like to draw attention to one other important person who is an old boy of Lismore, that is, the Clerk, John Evans, who has given 30 years of service to this Chamber. John was educated, not at Murwillumbah but at Lismore High School.

### SEASONAL FELICITATIONS

#### LAKE COWAL MINING PROJECT

**Ms LEE RHIANNON** [4.49 a.m.]: On behalf of the Greens I would like to extend appreciation to all the people who work in the New South Wales Parliament. Those of us who are members of Parliament are indebted to all parliamentary workers for their efforts to keep this place functioning. My colleague Ian Cohen and I very much appreciate the advice of the Clerk, John Evans. I note that we are ending this parliamentary year 30 years ago to the day that the Clerk commenced work here. Congratulations to Mr Evans on such an outstanding achievement. We greatly appreciate the advice and support that all of us receive from the Clerk's office and, indeed, from all the Legislative Council staff.

We thank the Hansard staff. What they achieve is amazing: warm appreciation from the Greens parliamentary team. When we leave here the Hansard staff will still be working. We thank them for their labours. To have the pinks and greens ready for us each sitting day is invaluable. That brings me to the printing staff. Pat Makin and her team ensure that all the hard work of the Hansard team ends up in our hands on time. They also print our reports and fulfil our printing requirements.

We also place on record our appreciation to all the workers in building, engineering, information technology, gardening and the security staff. Their co-operation and patience with our many requests are very much appreciated. We thank also the switchboard staff. I have never met this group of people; I am not even sure where they are situated in this place. The Greens also thank Parliamentary Counsel for their outstanding work throughout the year when we are sitting. Many people make our lives easier in this place.

Our office very much appreciates David Draper and all the catering staff. They have sustained us through this evening, as they do on so many occasions. Particular thanks goes to the catering and bar staff for the hard work they put in for Senator Bob Brown's dinner, which was attended by 380 guests. It was a very important night in the Greens calendar and its success was in large part due to the fantastic work of the catering staff. We also thank Mr Ian Pringle and all the Legislative Council attendants. These workers are often the interface between our office and the outside world, and they certainly help us to manage our business more effectively.

I extend thanks also to Teresa, the cleaner who keeps our rooms under control. The cleaning staff in this place work hard trying to manoeuvre around our excessive paperwork. Their efforts are very much

appreciated. Then there is the perennial favourite, the Library. Mr Rob Brian and his staff work wonders for all of us. I view the Library as an oasis of sanity and knowledge. At 4.52 a.m., the Library seems like a very strange place. It is invaluable that the Library is open as long as Parliament is sitting.

A big thank you to the President and all members of Parliament for their co-operation throughout the year. Yes, at times there are differences between us, but there is also much that we have in common. On behalf of the Greens, I wish all members and staff and their partners a restful and peaceful holiday and a very successful 2002. Thank you for an enjoyable year.

I will move on to the Lake Cowal project. The Greens are working closely with a number of organisations that are opposing the Lake Cowal mining project. The Rainforest Information Centre and Aboriginals are prominent in this campaign. The Greens and the Rainforest Information Centre are very concerned about the process of setting the security deposit for the Lake Cowal mining project. We believe public consultation needs to be involved before the amount of the deposit is finalised. The department obviously has technical expertise and considerable experience, however the public still needs to be consulted before finalisation of the security deposit to at least ensure that the community's expectations of the level of restoration of the site have been adequately expressed in the department's valuation. We are deeply concerned that excluding the public from this process would not only risk an undervaluation but would also create a climate of mistrust and suspicion between the department and the community. [*Time expired.*]

### INTERNATIONAL HUMAN RIGHTS DAY

**The Hon. IAN WEST** [4.54 a.m.]: I want to raise the important matter of the first International Human Rights Day of the twenty-first century, which was held last Monday, 10 December. Last Monday was also the 100th anniversary of the Nobel prize, and marked 10 years since the peace prize was awarded to Burmese democracy leader Daw Aung San Suu Kyi. The Burma regime continues to be one of the worst ever violators of human rights, with the continued practice of forced labour under threat of detention, torture, rape and even death.

The list of national-State human rights violators is very long. In Guatemala death threats by government and military against community representatives and union officials continue. Strikers are systematically imprisoned in South Korea. Union activity in Indonesia is regularly put down with force, sometimes with fatal consequences. In China many who organise for a better life through workers collective organisations are sent to psychiatric hospitals or forced labour camps. In fact, the International Confederation of Free Trade Unions lists 139 countries where trade union rights have been violated during the past year.

Amnesty International has made a call for a renewed global Coalition for Human Rights—and it is little wonder! On the first Human Rights Day of the twenty-first century refugees are still fleeing from many countries like Afghanistan, families are mourning loved ones in the occupied territories and in Israel, refugees are being turned away from Europe and Australia and elsewhere, children are being recruited to fight adult in Africa, human rights defenders are being assassinated in Latin America, the sexual exploitation of children continues in countries like Thailand and the Philippines. Forced labour and child labour are rampant in the forms of slavery, bonded labour and drug trafficking. The list is almost endless—but that does not mean that we should walk away from the problems.

We must utilise international best practice, standards and monitoring mechanisms to take decisive action to eliminate these horrors from our world if we are to achieve some semblance of civilised inter-reaction. Millions of people around the world expressed their support for human rights last Monday. In Greece, the theme for vigils was "No hope without human rights"; in Norway it was "No security without human rights". The Australian Human Rights Commission held candlelight ceremonies across the country and made a statement in sympathy with asylum seekers. Other events in support of International Human Rights Day were held in Pakistan, Argentina, Chile, Finland, Hong Kong, Japan, Malaysia, Peru, South Africa, Spain, Sweden, Switzerland, Tunisia, the United Kingdom and Venezuela.

Recently, all members of the Australian Labor Party Caucus signed a statement in support of Colombian human rights activists and trade unionists. That statement has now made its way to the United Kingdom, and will be helpful in gathering support to stop the killing and torture of people who wish only to live a life free from insecurity and poverty. This is probably our last sitting day for 2001. As we make our way back to our families and friends for Christmas and the new year, spare a thought for those people across the globe who suffer torture, arbitrary detention, unfair and manipulated trials, discrimination, poverty, illiteracy and personal degradation on a daily basis. I wish everyone in this Chamber all the best for a safe and happy festive season and new year.

I look forward to continuing to work with honourable members for a better, safer and fairer world in 2002 for all nations and their people, and not just the privileged few in New South Wales and in Australia. I take this opportunity to speak about the important issue of people with disabilities. I am sure that the Hon. Dr Brian Pezzutti will be extremely concerned to ensure that the consideration of people with disabilities is at the fore of the Government's thinking in 2002. I am sure also that he will be extremely interested in making sure that he reads in detail the adjournment speech of the Hon. Jan Burnswoods.

### MORISSET POLICE STATION

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [4.59 a.m.]: I take this opportunity to give the new Minister for Police something to think about during the Christmas adjournment that is a very important to the people of Lake Macquarie.

**The Hon. Michael Egan:** He has gone home.

**The Hon. MICHAEL GALLACHER:** He may well have gone home but I am sure that the extremely important issue of policing at Lake Macquarie will be brought to his attention at about 5.05 a.m. when he will be woken from his slumber.

**The Hon. Michael Egan:** Why did it take you until 5 o'clock in the morning to tell him?

**The Hon. MICHAEL GALLACHER:** Because we were waiting for the end of the debate on legislation so exactly what is happening in this place about Lake Macquarie policing can be broadcast. In 1996, one of the first things that Commissioner Ryan did when he came out from the United Kingdom was to go with Paul Whelan, the then Minister for Police, to Morisset on the southern banks of Lake Macquarie to open the Morisset Police Station. Up until that point in time, Morisset Police Station was a one-man police station. In fact, it was a police residence with what was known as a lock-up keeper.

In 1996 the State Government, together with the police commissioner, made a pledge that Morisset Police Station not only would be significantly refurbished but would be staffed to operate as a 24-hour police station. Of course, it did not take very long for the people of Morisset to work out that, like Kimcumber and Stockton police stations, the station was nothing more than a facade. In fact, immediately after the opening the rot set in for the people of Morisset when they found that no police were going to be made available for Morisset Police Station.

Recently, early one evening when Morisset Police Station was unattended, unknown persons forced open one of the windows at the back of the station, which is accessible by a public footpath, and put something inside the window and set fire to the station. The fire extinguished itself, fortunately, as the State Government neglected in the 1996 reconstruction of Morisset Police Station to connect the fire alarms. The fire alarms were fixed to the ceiling but had not been connected to the electricity. Therefore the local fire brigade was not notified of the fire.

I am reliably informed that a couple of days later the police officer attached to Morisset police station arrived to find the fire in the locker room. Fortunately it had not caught, otherwise the entire station would have burnt down. It is interesting to note that an inspection of the police station after the fire revealed extensive white ant damage throughout the building.

*[Interruption]*

It is a shame that the Hon. Jan Burnswoods shows her complete and utter contempt for Morisset. She has no time for Morisset. I recall that, as a new member here, one of the first speeches I had to listen to was by the Hon. Jan Burnswoods, when she cried crocodile tears about Warnervale airport. It is a shame that the honourable member cannot show some respect for the people of Morisset and the neighbouring town of Cooranbong, who are very concerned about policing.

Morisset has only one police officer, who works three or four days a week. He does not work afternoon or night shifts, because there is no back-up officer to work with him. This policeman works on his own. The only other police who service the Morisset area come from Toronto, which is some distance to the north. Wyong is further to the south. It is important to air the concerns of the people of Morisset in this Chamber. Honourable members will be aware that in recent weeks I have presented several petitions signed by more than 400 local

residents praying for a permanent police presence at Morisset. I conclude by congratulating local resident Michael Chamberlain from Cooranbong, whom I suggest is well known to many honourable members. He has been instrumental in focusing attention on policing in the area and on support for the local community.

#### **BISHOP GEOFFREY JARRETT LITURGICAL RECEPTION**

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [5.04 a.m.]: I join with the Hon. Dr Brian Pezzutti in welcoming Bishop Jarrett as the new Catholic Bishop of Lismore. Although I have not had the privilege of meeting Bishop Jarrett—

**The Hon. Dr Brian Pezzutti:** You will.

**The Hon. MICHAEL EGAN:** As the Hon. Dr Brian Pezzutti points out, I am sure I will in due course. I had the pleasure of meeting his predecessor, Bishop Satterthwaite, many years ago—in 1979, I think—with Mr Kevin Stewart, who was then the Minister for Health. I accompanied him on a tour of health facilities in the North Coast region and we dined with Bishop Satterthwaite in Lismore. He certainly did a fine job for the diocese during his time as bishop. I congratulate both Bishop Satterthwaite on his great work during 30 years for the people of Lismore and Bishop Jarrett on his new appointment.

**Motion agreed to.**

**House adjourned at 5.05 a.m., Friday, until Tuesday 26 February 2002 at 2.30 p.m.**

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