LEGISLATIVE COUNCIL

Tuesday 19 March 2002

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The President (The Hon. Dr Meredith Burgmann) took the chair at 2.30 p.m.

The President offered the Prayers.

The PRESIDENT: I acknowledge that we are meeting on Eora land.

OFFICE OF THE OMBUDSMAN

Report

The President announced, pursuant to the Ombudsman Act 1974, the receipt of a special report entitled "Improving the management of complaints—Identifying and managing officers with complaint histories of significance", dated March 2002.

The President announced that, pursuant to the Ombudsman Act, she had authorised that the report be made public.

PETITIONS

Local Government Boundary Changes

Petition praying that the House conduct a public inquiry into the proposed local government boundary changes and ensure that a plebiscite takes place before any boundary changes are made, received from the Hon. Duncan Gay.

Noor Al Houda Islamic College

Petition praying that the House ask the Government to locate a suitable property as soon as possible for lease or purchase by the Noor Al Houda Islamic College, received from **the Hon. Dr Peter Wong**.

Gay and Lesbian Mardi Gras

Petition praying that legislation be introduced to allow ethnic groups to take over the Gay and Lesbian Mardi Gras to produce a multicultural ethnic parade, received from **Reverend the Hon. Fred Nile**.

Branch Line Above-Rail Community Service Obligation

Petition asking that above-rail community service obligations on branch lines be reinstated until branch line infrastructure is upgraded to a standard to ensure competitiveness with main lines, received from **the Hon. Doug Moppett**.

Freedom of Religion

Petition praying that the House reject proposals to reform the Anti-Discrimination Act that would detract from the exercise of freedom of religion, received from **the Hon. Ron Dyer**.

Family Impact Commission Bill

Petition praying that the integrity of the family unit be encouraged, that the Family Impact Commission Bill be supported in its current form and that all proposals to amend the definition of the family as defined in the bill be rejected, received from **Reverend the Hon. Fred Nile**.

BUSINESS OF THE HOUSE

Routine of Business

[*During notices of motions*]

The Hon. Michael Egan: Point of order: Although I would not anticipate that you would be in a position to give a ruling immediately, Madam President, I draw your attention to Standing Order 19, "Addresses for Papers", which states:

> The production of Papers concerning the Royal Prerogative, or of Despatches or other Correspondence addressed to or emanating from His Excellency the Governor, or having reference to the Administration of Justice, shall be asked for only by Address to the Governor.

The PRESIDENT: I will take that under advisement and rule on the matter tomorrow.

FORESTRY ACT: DISALLOWANCE OF FORESTRY (MISCELLANEOUS AMENDMENTS) REGULATION 2001

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

> That under section 41 (1) of the Interpretation Act 1987 this House disallows the Forestry (Miscellaneous Amendments) Regulation 2001 published in *Government Gazette* No. 188, dated 7 December 2001, page 9591, and tabled in this House on 11 December 2001.

The Greens, the green movement and I have serious concerns in relation to the Forestry (Miscellaneous Amendment) Regulation 2001. The major concern is that the regulation increases the penalty applicable to an offence under subclauses (1) (a) and (1) (b) of clause 69 of the Forestry Regulation 1999. The relevant offences are "approach a person operating harvesting or hauling equipment", and "interfere with such equipment".

The penalty for these offences is increased from $100 to $1,000. It is not appropriate that the offences should be dealt with by way of penalty notices without an opportunity for the matter to be heard by a magistrate. These penalties are not minor, though the offences may be quite minor when committed by protesters seeking to bear witness to the destruction of old-growth forests or endangered species habitat destruction that is still allowed by the Carr Government. A fine of $1,000 is a serious matter. The clear intention of the Government is to impose a draconian penalty on people who are engaged in peaceful protest in the forests. People have a right to protest against the destruction of forests and the failure of the Carr Government to honour its 1995 forest protection promises.

The Hon. Doug Moppett: They should not sabotage property.

The Hon. IAN COHEN: Exactly. The Hon. Doug Moppett has raised the valid issue of sabotage of property. I suggest that draconian action by the Government encourages that type of reaction, something I wish could be avoided.

The Hon. Doug Moppett: They do it anyway.

The Hon. IAN COHEN: The Hon. Doug Moppett interjects that they do it anyway. That is not the case. If people in the forest are able to take peaceful, non-violent protest action, that type of vandalism does not occur. The Government's promises included an end to export woodchipping by 2000 and the establishment of a comprehensive reserve system rather than preservation of half the minimum area that scientists have told the Government needs to be protected. Protesters and conservationists in the forests have caught out State Forests in breach time and again. Recent court cases have proved the Greens position to be correct in a number of aspects. There seems to be a shameful connection between those broken promises. The protesters are out in the forests and doing something about acknowledging those broken promises and the activities of State Forests.

This country has had a long history of peaceful, non-violent community protest on many issues, including French atomic testing, and the forest protests have been an extremely important part of our tradition. People believe they have a right to protest in the forests in a non-violent way that damages neither the operators nor their equipment. That is an important issue at this time. People in the forests who engage in non-violent action do not destroy equipment; that sort of destruction does not happen around people like that. The Government's draconian action could result in others being encouraged to damage the property of loggers when no-one is around. This regulation has come into operation just as the Federal Government's Regional Forest Agreement [RFA] legislation passed through Federal Parliament.

The RFA legislation gives the timber industry an enforceable entitlement to compensation if timber volumes cannot be met, despite ever-increasing scientific concern over industrial logging and woodchipping. These concerns include water catchment flow, quality and supply resource, and the further degradation of forest habitat beyond tolerable limits, not only for currently endangered species but for a host of other forest animals, plants and birdlife. These companies, supported by the Carr Government, are being given the right to destroy our natural heritage, our children's heritage, at no cost to the Government—or, even worse, with a subsidy from New South Wales taxpayers. The legal situation in the forests is absurd. The companies that are clear-felling the forests can receive millions of dollars in compensation, while the people seeking to peacefully defend the forests are subject to draconian penalties.

State Forests has been freed by the Carr Government of its obligations to prepare an environmental impact statement [EIS] for its logging and woodchipping operations, an obligation that has to be met by every other developer in New South Wales, whether a private company or a State agency. This Government has gone from green to brown to charcoal black in just seven years. The Premier is a hypocrite when he speaks about saving the forests. The real green Premier is Peter Beattie, in Queensland, who has unilaterally ruled out any woodchipping or burning of forests for power, charcoal, et cetera. He has instituted a transition plan under which all logging will cease progressively in the forests of south-east Queensland as the timber industry moves towards plantations.

I commend the disallowance and ask that the House considers a future for the timber industry based on plantations, not on archaic woodchipping and burning of forests for paper pulp, charcoal, and power, as is presently supported by the Carr Government. I ask the House to give serious consideration to the many young people who go into the forests with no interest other than to do the right thing by the environment and to act peacefully and non-violently to save the forests. Under the Government's draconian regulation those young people can be given fines of up to $1,000, with no access to a court process. That creates a terrible imbalance and will add to frustration in the forests.

The Hon. Doug Moppett: How do you come to the conclusion that they cannot go to court?

The Hon. IAN COHEN: A fine is issued, like a parking fine.

The Hon. Doug Moppett: If you cannot pay it you go to court.

The Hon. IAN COHEN: The honourable member says that if you do not pay the fine you go to court, but you just end up with more fines. A court appearance would create more expense and would only play into the hands of those who are interested in operating in our wonderful forests without transparency, without inspection by protesters and without public scrutiny.

The Hon. Doug Moppett: What a lot of rubbish! They are operating in timber farms, not in your wonderful forests!

The Hon. IAN COHEN: I have just heard the most ridiculous statement from the Hon. Doug Moppett. I wish it were timber farms. I wish they were working on plantations, as we have been promoting for the past 20 years. The honourable member should have woken up to that by now. The National Party should emerge into this century. The industry should be harvesting in timber farms, but they are still in old-growth forests, and that is ridiculous. I commend the motion.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [2.57 p.m.]: The Government will oppose the motion. The regulation does not prevent peaceful protest action as long as that action is conducted a safe distance from lawful timber harvesting operations. The Forestry (Miscellaneous Amendments) Regulation 2001 was gazetted on 7 December 2001. The amendments to the Forestry Regulation made at that time had the following varied purposes:

> To rectify a couple of minor anomalies that occurred in the prior consolidation of the regulation relating to penalty notice offences under timber licences, contractor licences, operator licences, "other" licences and permits issued under the regulation;
>
> To allow penalty infringement notices to be issued for breaches of the regulation rather than resorting to formal prosecution action through the courts in relation to unauthorised camping in a State forest;
>
> To enable permits to collect firewood on State forests to be more readily available to the public through appropriately delegated officers of local councils or Australia Post; and
>
> To effect an increase in the penalty amount for contravention of the "offence to approach or interfere with certain operations".

This latter provision is necessary because, despite the outstanding forest conservation achievements of this Government, there have been instances of individuals protesting in an unlawful manner against harvesting operations in certain locations determined as being available for logging under comprehensive regional forest assessments and regional forest agreements. These actions have the very serious potential of jeopardising the safety of the individual protesters as well as the workers involved in the harvesting operation. In a broader context, it is important to note that all coastal and tablelands native forests in New South Wales have now been assessed under comprehensive regional forest assessments conducted by the State and Commonwealth governments.

Following these detailed scientific assessments, during which there was extensive consultation with stakeholders, 1.4 million hectares of new national parks and reserves were created in coastal New South Wales. At the same time the Government has delivered security and certainty to the timber industry with 20-year wood supply agreements, fostering a sustainable value-adding timber industry in regional New South Wales. Integrated forestry operations approvals apply to timber harvesting in areas where comprehensive regional assessments and New South Wales forest agreements have been completed. Integrated forestry operations approvals impose strict environmental protection on all forest operations which are enforced by regulatory agencies such as the National Parks and Wildlife Service and the Environment Protection Authority [EPA].

Licence conditions protect high conservation value forests, rainforests, old-growth and rare forest types, steep slopes, significant heritage places, endangered plants and animals, riparian areas and waterways in State forests. It is important to listen to the concerns of stakeholder groups and adapt operations where possible. It is also important to continue the development of a value-adding, sawlog-based timber industry by ensuring that log supplies to timber mills are maintained and that timber mills, harvesting contractors and their workers have continuous work.

The timber industry has responded to the provision of long-term resource security and has invested in improved equipment and training at considerable cost to the companies and individuals involved. At an early stage any specific concerns of forest protesters are considered against the rules set down in the integrated forestry operations approvals, New South Wales forest agreements and regional forest agreements. Measures taken in this regard include ceasing operations whenever protesters approach within an unsafe distance, directing forest protesters out of the area where harvesting occurs and temporarily closing the forest where necessary.

I am advised that the term "closure" in relation to a State forest is sometimes misconstrued by opponents of forest logging. I should therefore clarify the point that the temporary closure of a forest during harvesting operations does not restrict the entry of authorised officers of the regulatory agencies such as the National Parks and Wildlife Service and the EPA in order to undertake inspections. State Forests harvest planning information is available to conservation or other groups well in advance of harvesting operations. This provides the opportunity for conservation groups to review State Forests plans and bring any concerns to the attention of State Forests prior to the commencement of harvesting.

The Carr Government has undertaken the most significant forestry reforms ever seen in New South Wales, which were needed in the long-term interests of regional communities and our natural heritage. The reforms provide for a comprehensive, adequate and representative reserve system and a viable value-adding timber industry. This is achieved by the implementation of the New South Wales forest agreements. It is because of concerns about public safety that it is an offence to approach within 100 metres of a person operating timber harvesting or hauling equipment. The penalty for this offence needs to be commensurate with its seriousness so as to act as an adequate deterrent to the disruption of lawful harvesting but without necessarily resorting to arrest and prosecutions.

The Forestry Act 1916 and regulations provide for a graduated response to protests about logging operations in State forests according to the seriousness of the situation. There is still provision under the regulation to issue a penalty infringement notice for $100 for a less serious offence such as refusing to leave an area when requested. The issuing of a penalty infringement notice for $1,000 need only apply to a more serious offence. This is a measured and reasonable approach. I repeat that the regulation does not prevent peaceful protest action as long as that action is conducted at a safe distance from lawful timber harvesting operations.

The Government continues to support consultation and negotiations with stakeholders to resolve issues within the New South Wales forest agreement arrangements. We also continue to urge that forest protesters abide by the legal requirements by not entering prohibited areas and that they follow the directions of authorised officers. This will enable a protest against safety, and foster the resolution of issues by consultation rather than confrontation. I urge the House to oppose the motion.

The Hon. RICK COLLESS [3.04 p.m.]: The Opposition opposes the disallowance motion for reasons similar to those put forward by the Government. The forestry operations that occur in this State are legal business operations. They are extremely dangerous operations. Many heavy machines operate on a forestry logging site: bulldozers, tree-felling machines, power saws, chainsaws, winches and log trucks.

The Hon. John Jobling: And there are trees falling.

The Hon. RICK COLLESS: As my honourable colleague points out, there are also trees falling.

The Hon. Doug Moppett: Ask WorkCover what it thinks of the operations.

The Hon. RICK COLLESS: Yes, logging operations have the highest WorkCover fees for workers compensation because they are so dangerous. It is extremely dangerous—much more dangerous—for unauthorised people to enter a site without permission. They do not know what is going around them, which trees are about to fall, and so on. For that reason the fines need to be substantial enough to ensure that people are discouraged from entering sites.

There have been many reports of protesters driving nails or steel spikes into trees. That is the most dangerous thing they could do. If the spikes are not found before the tree gets into the mill, a six-inch nail can fly out of a power saw at hundreds of kilometres an hour. It is like a six-inch long bullet coming out of the sawmill. It is extremely dangerous. Those sorts of things must be stopped. People should not be able to enter forests to do that sort of thing.

The arguments raised by the Hon. Ian Cohen basically concern ethical issues surrounding forestry operations: Do we or do we not need forestry operations? He believes that forestry operations in State forests should stop. Whether that is right or wrong is not the argument here. At this point in time forest operations are legal, and as such the operators of the businesses have the right to feel safe in their workplace and free from intruders in their factory area. It is about the safety of persons in the management of forest operations—the safety of workers and intruders. They cannot guarantee their own safety because they do not know which trees are going to come down next. They do not know what happens if the winch cable breaks. All those things have to be taken into consideration.

It has been claimed that fines of $1,000 are excessive. These people are breaking the law. Many speeding fines are in excess of $1,000. This regulation will just put equity into the fines applicable to people who are breaking the law and interfering with legal forestry business operations. As the Minister said, if the protesters wish to undertake a peaceful protest, that is fine, but they should not put themselves at risk by being in the work area, and they should not put the workers at risk of injuring themselves or anybody else.

The Hon. MALCOLM JONES [3.09 p.m.]: The mover of the disallowance motion chose to paint a rather misleading picture of activities in forests. There was an attempt to conceal the fact that people who receive an on-the-spot fine are entitled to argue their case in court. If the magistrate who hears the complaint considers that the person had been issued the ticket wrongfully, it would fall upon the magistrate to remedy the situation. Rather emotive language has been used by members in this debate, including the Hon. Doug Moppett.

I turn now to the safety aspect of harvesting timber, as mentioned by the Hon. Rick Colless. Foresters' equipment is extremely difficult to use and is amongst the most dangerous equipment that one can use. The interference of people who are not fully aware of the dangers of that machinery is foolish and imprudent. The Hon. Ian Cohen referred to clear-felling.

The Hon. Ian Cohen: I did not refer to clear-felling.

The Hon. MALCOLM JONES: The Hon. Ian Cohen mentioned clear-felling. I want to know where clear-felling takes place in New South Wales.

The Hon. Ian Cohen: I did not refer to clear-felling in my speech.

The Hon. MALCOLM JONES: We will check *Hansard* tomorrow. Another topical issue is what happens with forests. I want the House to note that during the bushfire emergency, State Forests held 2.8 million hectares of land in New South Wales. By comparison with a larger landowner, twice as big, State Forests hazard-reduced 100,000 hectares of land prior to the bushfire emergency last Christmas. During the bushfires

only 2,000 hectares of State forests were affected. Compared with any other land user that is a tremendous result. State Forests assisted biodiversity by undertaking that hazard reduction, and that tends to be an argument for not back-burning or hazard-reducing.

State Forests is not the environmental vandal that some would opt to paint it as. During the past Christmas period State Forests proved to be very conservation conscious. The timber gatherers have to operate under a legal licence, but, as the Hon. Rick Colless said, they are there for lawful purposes. Like anyone pursuing a legitimate occupation, timber gatherers should be allowed to pursue their occupation in a safe environment. Therefore I cannot support this disallowance motion.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.13 p.m.]: I support the motion. Under this Government's policies State forests are in a very sad state. The detailed assessments of forests that were undertaken lacked credibility. On a number of field trips people have pointed out to me that the amount of wood per hectare has been overestimated and that, in fact, uneconomic areas will have to be logged in order to meet suggested quotas. Forestry groups think of sustainability in terms of wood rather than biodiversity and they have an undeveloped idea of environmental protection. While there are elements within State Forests that have a good understanding of biodiversity, the department still uses subcontractors who are far less conscientious.

I do not understand the relationships between State Forests and those subcontractors, but I believe that the subcontractors take the biggest and most easily accessible wood. I do not believe that that exercise is adequately supervised. The way in which some trees are chopped down, leaving preferred trees, will lead to a move toward monoculture during the regrowth phase. On a number of visits to the south-east forests I have noticed that there tends not to be any regrowth of trees that are not useful to foresters. The enthusiasm to sign new contracts for charcoal production is a move towards survival for State Forests, a department that continues to produce wood.

The Government has a tendency to lock itself into long-term contracts and there is a fear of breaching the contracts because of the impact of the World Trade Organisation on countries that do not honour contracts. The idea of resource security is effectively resource insecurity; "resource security" means a guaranteed resource that can be taken rather than a guarantee that the resource will be looked after. Biodiversity is resource insecurity, because a contract that has been signed for a certain amount of timber does not relate to the ability to maintain the quantity of biodiversity that exists in our forests.

There is economic madness in this. This resource is very slow to regrow compared with the speed at which old growth trees can be chopped down. Basically we should not reap where we have not sown. Although it is inconvenient that trees grow slowly, that is a natural process and we should follow it and use more plantation timber. Sufficient emphasis has not been placed on plantation timber, particularly hardwood. The charcoal plant, whereby it is hoped that money will be made from silicon, uses butts and unwaste timber. That begs credibility when one considers what happens on the forest floor, particularly in Western Australia, where the very best of jarrah is stacked up ready to make charcoal for silicon.

The problem there is that the money raised from silicon is a drop in the bucket compared with the money made by people who make woodchips and grow softwood. Either way we are getting the least cost-effective part of the entire process of this knowledge explosion. With woodchips used for paper production, we are buying back paper at 100 times the cost of woodchips. We are very much at the third-world end of the chain. Jobs lost in the tobacco industry were blamed on people who were trying to reduce the number of deaths caused by smoking. As the Hon. Malcolm Jones said, the equipment used in the timber industry is large, and the industry sheds labour by allowing foresters to chop down trees more easily. Thus the job losses are blamed on the conservationists—again, another nonsense.

There is no doubt that the equipment is dangerous and that it deals with large forces. As an occupational health physician I would be the first to concede that the workers compensation and safety ramifications are great. This means, of course, that the protesters are absolutely determined. They have seen the insanity that I have just outlined and they are courageous and willing to put themselves on the line for this cause. In 2000 the Hon. Ian Cohen moved a motion for $100 fines and the creation of new offences. Those fines are now $1,000 and they are given out almost like speeding tickets, without any magisterial process. Whenever there is a law that is widespread and involves systematic destruction, we have to consider why that law is disobeyed and why people are so upset. We simply increase penalties as a jackboot solution to get rid of protesters, and the protesters are genuinely committed to a real outcome.

To suggest that people should conduct a peaceful protest with a little tent or a few banners miles away from the action is totally ineffective; it is in line with the nonsensical suggestion during the Vietnam War that

protesters could march so long as they did so on the footpath, because people drive on the roads. That was said in all seriousness in an endeavour to deter those protesters. There is need for reasonable penalties that take into account the conscientious beliefs of protesters. The Government should consider its actions instead of simply increasing penalties in this fashion. I support the motion.

The Hon. RICHARD JONES [3.20 p.m.]: I support the motion of the Hon. Ian Cohen. I applaud also the young people who have gone into the old-growth forests and put themselves in danger to try to save our old-growth trees. I have met many of these people and they are very passionate in their beliefs. We should not just write them off as ferals, protesters, or greenies; they are ordinary boys and girls, the sons and daughters of friends of mine, and thank heavens they do protest. They are doing it not for their own aggrandisement, as we often do in this Parliament, but because they believe in saving the old-growth forests.

I, too, have been in the forests, arrested and put in prison with these young people. I have been proud to be associated with them because of their dedication. That is partly because for years they have put themselves on the line in order that we might have a better reserve system than otherwise would be the case. They are trying to save the forests not for themselves but for their great-grandchildren and great-great grandchildren. These trees are 200, 300 or 400 years old—ecosystems that in some cases have never been disturbed by humans, or only minimally disturbed by indigenous people.

The Hon. Rick Colless: Rubbish!

The Hon. RICHARD JONES: It is not rubbish, it is perfectly true, and the honourable member knows that. I went into compartment No. 142, which had been half logged. It contained magnificent trees that are wider in their girth than this table. They were of no use to the logging industry except for woodchipping because they were hollow habitat trees that had been knocked over left, right and centre. Because that compartment had been damaged, the decision was taken to finish it off. It was considered to be no longer wilderness and not worth conserving because half of it had been destroyed.

Two friends of mine are successful timber operators with their own mills. They run a highly profitable business with their own private forests; they do not depend on State forests. They told me that State forests are treated abominably by the contractors and by Boral. These timber operators log their private forests carefully and they sell their timber for $4,000 a cubic metre.

The Hon. Doug Moppett: They would not be selling that for charcoal, would they?

The Hon. RICHARD JONES: No, they do not. They sell the timber for high-quality furniture and flooring for million dollar houses in Sydney. They supply directly to builders and do extremely well. These successful people have hundreds of acres of private forests that were done over by Boral 20 years ago, when huge trees were left on the ground that constituted perfectly good waste timber. My friends remove trees selectively and, through careful logging, are making an enormous amount of money.

State Forests should not manage our forests; they should leave them to private operators because they look after the land better. Also, State Forests should not deliver timber to private people but should buy its own land and manage the forests on it for the long term. The result of logging is not noticeable if trees are selectively logged, because the canopy remains largely intact. The logging that has been permitted by State Forests down south and up north is shocking. The bulk of the timber goes to woodchipping—and woodchipping should have been banned years ago.

The Hon. John Jobling: Point of order: This disallowance motion is quite specific. It refers to the quantum of fines. Although I find the address of the Hon. Richard Jones quite interesting, it has little or no relevance to the motion.

The Hon. RICHARD JONES: To the point of order: I accept the point of order and I am sure the Deputy-President will rule in favour of it. I will now speak to the motion, as opposed to the periphery of it. This regulation should not be in place because it should not be necessary for young people to enter forests to try to preserve the remnants of our old-growth forests, which are not termed "old-growth" because some have been damaged. We should not log any tree that is more than 200 years old. Regrowth, private plantations and public plantations are fine but we should not log old-growth trees and habitat, irrespective of whether it is deemed to be of wilderness value.

The Hon. JANELLE SAFFIN [3.25 p.m.]: This regulation has not yet been considered by the Regulation Review Committee and I speak in my capacity as the Deputy-Chair of that committee. Forestry

Regulation 1999 currently provides that the prescribed penalty for the offence of contravening a condition or limitation of an authority, when dealt with by way of a penalty notice, is $1,000. The Forestry Miscellaneous Amendments Regulation 2001 provides instead for the following penalties for that offence—which is a breakdown—$1,000 for contravention of a condition or limitation of an authority being a timber licence, a contractor's licence or an operator's licence, and $100 for contravention of a condition or limitation of any other authority.

The proposed regulation also amends Forestry Regulation 1999—and this is the point of contention—to increase from $100 to $1,000, or 20 penalty units, the prescribed penalty for the offence of approaching within 100 metres of a person operating timber harvesting or hauling equipment or interfering with such equipment in a forestry area. These offences are to be dealt with by way of penalty notices. There are other aspects to the regulation but that appears to be the main one. The regulation is made under the Forestry Act 1916.

I reiterate that this regulation has not been considered by the Regulation Review Committee. This Committee does not deal with all regulations but it deals with certain regulations, particularly the contentious ones. There are two aspects to our legislative power of review. One is to look at regulatory impact statements and the financial impacts of regulations, and the other is to take into account, by legislative mandate, any trespass on the rights of people. This regulation will certainly be subject to those aspects of our review power.

I support the Government in opposing the motion. The Regulation Review Committee resolves many problem areas, taking into account the views of interested parties. Also, the committee undertakes many inquiries into regulations and has quietly achieved good results.

Ms LEE RHIANNON [3.28 p.m.]: I congratulate my colleague Mr Ian Cohen on moving this disallowance motion. It has been necessary because the changes to the regulation proposed by the Government are clearly politically motivated. The Government's objective is to restrict people's right to enter forests. Surely Mr Moppett would agree that it is politically motivated. For the benefit of Opposition members, the right to protest, believe it or not, is a fundamental right, recognised internationally. I know that honourable members opposite are not too keen on international treaties but this right is recognised in western societies such as ours.

The Hon. Doug Moppett: Within bounds; within limitations?

Ms LEE RHIANNON: The Hon. Doug Moppett knows that there are limitations already. Time and time again protests are conducted peacefully. Honourable members have often heard us talk about non-violent demonstrations and the non-violent preparations for them. We are facing a period of increased protest action in our forests. The Regional Forest Agreements [RFA] Bill passed through Federal Parliament only last week, and it was a tragic day for our forests. The Federal Labor Opposition and the Coalition Government combined to defeat a sensible amendment moved by Senator Bob Brown that would have compensated workers in that industry. Huge compensation payments will now be made available to logging companies if forests are saved. The outcome will be disastrous in many areas, and people are acting responsibly in protesting about the RFA and its consequences. We must remember that although our present national parks were declared by the governments of the day they exist because previous generations of protesters did the hard yards in the forests and on the streets to raise awareness of why those wonderful areas should be saved for future generations. The Hon. Doug Moppett mentioned violent protests. Senator Bob Brown—who is obviously also attacked about this—studied the issue and discovered that in six out of 12 recent logging vandalism episodes in Victoria the culprits were connected with the logging industry.

The Hon. Doug Moppett: You don't expect us to believe that on your assertion?

Ms LEE RHIANNON: I ask the Hon. Doug Moppett to cite a case in which environmentalists were accused and found guilty of doing damage in our forests. That is an old furphy. The Tasmanian forestry Minister recently accused Tasmanian Greens member Peg Putt and Senator Bob Brown of being involved in the sabotage of logging machinery. That is absolutely outrageous.

The Hon. Jan Burnswoods: Point of order: Mr Deputy-President, you ruled very wisely on a previous point of order. We are discussing a fine of a certain sum and Ms Lee Rhiannon is straying a long way from the leave of the debate. I ask you to remind her of your previous ruling.

The Hon. Ian Cohen: To the point of order: If the fine in this case is considered to be too draconian, it will affect peaceful public protests in other areas. Ms Lee Rhiannon is making a valid point. It is not outside the leave of the debate to discuss people's right to protest in this society.

The DEPUTY-PRESIDENT (The Hon. Tony Kelly): Order! I repeat the ruling I have given in previous debate. This regulation is specific and relates to fines. Therefore, I ask Ms Lee Rhiannon to confine her remarks to the regulation.

Ms LEE RHIANNON: The Greens are greatly concerned about the changes that the Government is introducing through this regulation. By increasing the amount of the fines and amending the way in which they will be imposed, the Government clearly aims to restrict the ability of people to engage in peaceful protests. Such demonstrations play an important role in our society and are vital to our economy: national parks attract tourists and thus bring important economic benefits. I congratulate the Hon. Ian Cohen on moving this disallowance motion.

Reverend the Hon. FRED NILE [3.34 p.m.]: The Christian Democratic Party opposes this disallowance motion. The Forestry (Miscellaneous Amendments) Regulation 2001 seems most moderate on every count. The proposed regulation will amend the Forestry Regulation 1999 to:

> … increase from $100 to $1,000, the prescribed penalty for the offences of approaching within 100 metres of a person operating timber harvesting or hauling equipment, or interfering with such equipment, in a forestry area, being offences that are dealt with by way of penalty notices.

This very important aspect of the regulation should be retained. I am sure we have all seen on television people not simply protesting against logging but deliberately interfering with and hindering timber workers. In some cases protesters even climb onto equipment, tractors and so on, causing timber workers obvious agitation. Timber workers have a right to try to remove protesters from their equipment as it is dangerous to operate equipment upon which protesters are standing. However, when workers push protesters off their machinery the Greens' videos start to roll and the resulting tapes are said to be proof of violence by timber workers against protesters. We are never made aware of the context in which this action was taken. Timber workers are simply performing a task—one would expect the Greens to be concerned about workers trying to do a day's work—and the protesters are interfering.

The regulation introduces a no-go zone of 100 metres. If I had my way, I would prohibit protests in our forests. Protests should be held only outside the forest area on access roads and so on and not in a working environment. As other honourable members have said, protesters—who may have no knowledge of logging equipment or the mechanics of tree felling—can be carried away by their enthusiasm and put themselves in a dangerous, perhaps even life-threatening, position. Therefore, we support retaining the regulation in its present form and oppose the disallowance motion.

The Hon. DOUG MOPPETT [3.37 p.m.]: For an instant of careless rapture I thought I detected some area of accord with the Hon. Ian Cohen, who commenced his address by expressing his concern at the quantum of money involved in the proposed fines. I share his concern because I believe a fine of $1,000 is a very small sum given the serious nature of some of the offences listed. None of us has a problem with peaceful protests, and we do not imagine for a moment that non-violent protesters should incur a massive fine or some retaliatory action from authorities. However, when it comes to sabotaging logging equipment, interfering with the activities of organisations pursuing their rightful business entitlements and with workers who depend on those companies for employment, I believe much firmer action is required.

People claim that such protesters are acting legally, but that is not to say that their actions are not illegal in the narrow sense of the word. This issue has been examined exhaustively by State and Federal governments. After possibly two decades of anti-logging protests some sort of armistice has been reached in the form of the regional forest agreements. The Government is attempting to support those remnants of the forestry industry that must secure a resource that is vital to our society. I may be drawing a long bow—and if I am you may bring me back to the leave of this regulation, Mr Deputy-President—but protesters occasionally talk of using the river transport alternative, which is less polluting. This necessitates the building of more wharves, and turpentine logs are the best material to use for that purpose. However, when that suggestion is made someone will respond, "No, we must make them from concrete because we can't cut down trees. But we can't have concrete because that might mean mining limestone from Colong Caves or somewhere else." It is an endless circle: we can never agree about how to meet society's needs.

Timber harvesting is needed in our society, and we have come through an exhaustive process in relation to that debate. As a spokesman for the Opposition on behalf of the timber industry, my comments about the balance being struck too far towards conserving forest areas or areas that were previously devoted to forestry are well known, but a compromise was reached. I do not believe anyone would advocate a review of that exhaustive and painful process.

Both sides should accept what was distilled from that process as a working solution. If it were then said, "Oh no, we are going to shift the goalposts again," that would bring to mind that wonderful notion, "I can't see the woods for the trees. I'm hugging this tree. I don't care how many millions of other trees are identical, I'm hugging this tree and I want to stop logging altogether." That is the ultimate aim. Of course, inevitably we heard the old shibboleth, the old slogans from the disingenuous and misguided, reaching a crescendo of ululations from that lot that "We will never be satisfied until the timber harvesting industry in this State is shut down." I am determined, as are my colleagues, to see some justice dealt out to those who are not prepared to accept the law or prepared to confine their actions to peaceful protests, but instead are prepared to put lives and property in jeopardy.

My only disappointment is that the scale of fines is not sufficient. Compare past results with what would happen to a farmer in either the Wellington or Quambone districts who might unwittingly breach the Native Vegetation Conservation Act. My heavens! If he received a $1,000 penalty notice he would be a darn lucky man as it would have been a totally unwitting and innocent breach of the regulation. These protesters go into the forests with determination and an organised objective to try to bring down the industry; they are prepared to stop at nothing to achieve those objectives and we are quibbling about whether a $100 fine should remain as the penalty for breaches of this regulation. A fatuous argument has been put forward in support of the motion to disallow the regulation. If the House is called upon to divide, I trust that we will support the Government and the regulation will stand.

The Hon. IAN COHEN [3.42 p.m.], in reply: I thank those who spoke both for and against this important matter. It has come down to the typical.

The Hon. Doug Moppett: Predictable, not typical.

The Hon. IAN COHEN: Typical and predictable. I thank the Hon. Doug Moppett for his exhaustive examination of the issue. The simplistic platitudes uttered by him tend to ignore some of the basic realities. We are not going to use the concrete from Colong Caves and we do not want to use turpentine timber from old-growth forests. Many alternatives are available such as recycling timber and concrete, and creating material from that which was used previously for industrial purposes, but I will not go into the details now. To do so would be to deflate the rapturous dissertation of the honourable member on the other side of the House, who is oh so keen to paint any Greenies or protesters as less than reasonable members of our society. However, if he were to refer to our history, he would find that our society is based on the efforts of such people.

When I hear such comments as, "That it is the law", my response is that it may be the law, but it is bad law. People have the right and duty to oppose such laws, and that is what is happening. The conservation movement has been left out in the cold with regard to the regional forest assessment [RFA] process in this State and nationally. There are countless examples of the destruction of forests resulting in the removal of this country's biological wealth. The Hon. Doug Moppett talked about hugging a tree that is the same as a million others. Such a comment is beneath his intellect because not all trees are the same and he knows that. He is of the view that plantations of lined trees ready for harvesting are old-growth forests! I invite him to visit a real old-growth forest and allow the conservation movement to show him what is really going on. The Hon. Doug Moppett suggests that the $1,000 penalty is too lenient, and he said that we were almost in agreement on that. I think not! Such an agreement would be akin to an agreement between someone who promotes a charcoal plant and someone who wishes to wander in wonderment around beautiful old-growth forests. On the issue of the $1,000 fine, I quote from a press release I issued recently:

> This is ten times the fine imposed for negligence causing devastating bush fires in State Forests, hunting or trapping protected native animals in State Forests, discharging a gun in State Forests (a logging contractor recently shot to terrorise protesters with no action taken by State Forests) or even stealing or destroying valuable timber.

That is the balance we are considering. The Government is allowing peaceful protesters in the forests to be handed $1,000 fines as if they were parking tickets. Someone suggested earlier that the actions of the protesters were similar to a motorist driving a speeding car. I suggest that the actions of a motorist driving a speeding car are far more dangerous, especially to other road users, than the actions of someone peacefully protesting—and it is absolutely vital that we realise that these people are peaceful protesters. I have been in the same situation many times. The Hon. Rick Colless mentioned tree spiking. Non-violent protesters do not go into the forests during the day and then conduct tree spiking at night. It does not happen that way. However, if people are locked out of the forests and draconian laws are created in this State, which has immense police powers to deal with those who have a right to protest—that is our history—then equipment will be sabotaged and trees will be spiked. The conservation movement does not promote tree spiking.

The Hon. Rick Colless: But they do it.

The Hon. IAN COHEN: Who is "they"? Honourable members opposite know that in 1979 "they" also burnt down the timber mill in Terania Creek. Everyone blamed the greenies. Members of the National Party and all their mates came out and said it was the Greens. Eventually it was discovered, after prodding by the police, that a disgruntled timber worker burnt down that timber mill. It was very convenient for the authorities and the politicians at the time to blame the Greens—and this happens time and again. People are destroying each other's equipment in forests all the time, and you conveniently blame the Greens. The Casino police files will show clearly that a disgruntled mill worker who was working under lousy conditions was responsible for that fire.

The Hon. Rick Colless: Was he charged?

The Hon. IAN COHEN: He was charged, but only after months of propaganda from your industry saying it was the fault of the greenies. The greenies were trying to save a rainforest that is now World Heritage protected, and in the years since their action the value of that forest has increased maybe 50, 100 or even 1,000 times. Honourable members should remember Terania Creek and the value of timber harvesting from that region. History proved that we were right. The same thing is happening now at places such as Mount Marsh, where protesters have joined forces to protect the forests and the habitat of the koala, yellow belly gliders and glossy black cockatoos.

[*Interruption*]

Members opposite may denigrate the argument; they might find great solace looking at an expensive painting or a beautiful work of art. Others in this society derive the same feelings from a forest and the creatures within the forest, which many people in our society believe is of greater importance to the social fabric of the community.

The Hon. Doug Moppett: Some people want floorboards too.

The Hon. IAN COHEN: People can get their floorboards from plantation forests. No-one is arguing with that. That is what we are arguing for, but people insist on continuing to get their floorboards from old-growth forests.

The Hon. Rick Colless: What about the timber in the lectern you just thumped? Where did that come from?

The Hon. IAN COHEN: This timber is cedar, and it is very old. Cedar is no longer logged. This timber is historical. It comes from old-growth forests. The conservation movement has urged and begged the Government to become involved in mixed cabinet plantations of rainforest timbers, but all it can do is whack up the hardwoods in unsuitable areas, which is why we have unsuccessful plantations all over the State. The Hon. Rick Colless knows that if the conservation movement and the industry work together, this sort of material can be produced in plantations. We do not have to log old-growth forests these days. Harvesting is not sustainable in old-growth forests. Not only is New South Wales still logging old-growth forests, not only are certain types still represented poorly in our research system, but also we continue to log viable habitat that provides adequate protection for species in danger of extinction.

As I mentioned previously, we should continue to protect Marengo compartments six and seven because currently they provide a habitat for the masked owl. That might sound like a joke to some, but in 1998 government scientists calculated how much owl habitat would have to be protected to ensure that a viable population of masked owls survives into the future in north-east New South Wales. They calculated that 1,224 breeding pairs of masked owl must be protected to ensure their survival. Despite this information the New South Wales Government has chosen to protect habitat for only 247 breeding pairs, which is less than 25 per cent of the identified minimum required for survival. The conservationist community never agreed to the regional forest agreement. We call upon the New South Wales Government to put a much-overdue end to old-growth logging and commit now to a comprehensive and adequate representative reserve system. That is a considered, consistent argument put forward by the conservation movement.

I concede that we have lost and you guys have won. You are trashing the place. You have done a number. But let us look at this regulation and consider what the Hon. Janelle Saffin said. This matter has not yet gone before the Regulation Review Committee; it has not been properly examined, yet it is already in place. We

ask that it be considered properly, which is why I moved this disallowance motion. People may ridicule us, but history will prove that, on this matter, their heads were stuck in the sand. Unfortunately, we may achieve a philosophical victory when old-growth forests are no longer represented. Honourable members are talking out off their hats if they think these areas are properly represented, because they are not. They are talking out of their hats if they think conservationists should not be in the forests, acting in a non-violent manner to protect the forests for the good of the whole community. I commend the disallowance motion.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 8

Dr Chesterfield-Evans	Mr R. S. L. Jones	*Tellers,*
Mr Cohen	Ms Rhiannon	Mr Breen
Mr Corbett	Dr Wong	Mrs Sham-Ho

Noes, 31

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

Question resolved in the negative.

Motion negatived.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

AUSTEEL TOMAGO LAND PURCHASE

The Hon. MICHAEL GALLACHER: My question without notice is to the Treasurer, and Minister for State Development. Is the Treasurer aware of concerns raised by the Austeel consortium about the State Government's failure to progress its purchase of land at Tomago? Irrespective of the recent decision on tariffs in the United States of America, why has the New South Wales Government failed to progress this matter, in particular the provision of land required to commence the environmental impact assessment, which is putting at risk this much-needed $2.8 billion project for the city of Newcastle and the wider Hunter valley?

The Hon. MICHAEL EGAN: I am not aware of any concern expressed by Austeel. It has certainly not indicated any concern to me. I did notice some media coverage that emanated from a Liberal councillor on Newcastle City Council along the lines of the question asked by the honourable member, but that was a few weeks ago. My recollection is that those comments by the Liberal councillor were contradicted by officers of Austeel.

BENTONITE MINING INITIATIVES

The Hon. TONY KELLY: My question is directed to the Minister for Mineral Resources. What are the future prospects for bentonite production in regional New South Wales?

The Hon. EDDIE OBEID: I thank my colleague the Hon. Tony Kelly, convener of Country Labor, for his continued interest in ensuring that regional New South Wales gets its share of investment dollars, and for his endeavours to create jobs in those regions. While our State's mineral exports are dominated by coal, the New South Wales Government continues to encourage investment in other valuable mineral deposits. Less known minerals, like bentonite, create jobs and support local businesses in country areas. The New South Wales Government is making sure we are well placed to take advantage of growing demand for bentonite. Bentonite is a clay with a variety of uses from cat litter to iron ore pelleting.

Bentonite is so versatile that it is also used in stock feed, civil engineering, in horticulture as a biological pest control, and as a sealant for dams and waterways. In the last financial year, more than 24,560 tonnes of this clay worth $1.8 million were produced in New South Wales. This mineral is extracted from two locations in our State. Unimin Australia currently operates a mine at Cressfield in the Upper Hunter, and Arumpo Bentonite has operations near Pooncarie, 80 kilometres north-east of Mildura. I am pleased to advise that new mining leases have been granted for both these companies. The lease means Arumpo Bentonite will be able to expand production. I am advised the company says it could increase production tenfold in the next decade.

At present 100 per cent of bentonite used in edible oil production in Australia is imported. I am advised the company plans to replace a significant proportion of this market with an Australian product. This new lease is good news for the far western community. At present the company employs 20 workers. Bentonite has also been mined in the Upper Hunter region for the past decade. Unimin Australia's expanded lease extends the life of the current mine and gives greater security for four workers and their families. The mine currently injects $500,000 a year into the local economy. I am advised the lease will allow the company to expand its production from 12,000 tonnes to 20,000 tonnes if new markets become available.

The outlook for Bentonite is positive. Global production is more than 10 million tonnes a year. Demand for pet products is expected to grow by approximately 4 per cent a year in Western Europe. Demand for bentonite in foundry sands and iron ore pelletisation is also predicted to increase. With such optimism in the worldwide market, it is hoped there will be a corresponding increase in our State's bentonite production. The granting of these two leases is another example of how this Government is supporting jobs and investment in regional New South Wales. Once again I thank Country Labor for its keen interest in regional New South Wales and for continuing to pursue every investment opportunity and creation of jobs.

ELECTRICITY INDUSTRY CONTESTABILITY

The Hon. DUNCAN GAY: My question is to the Treasurer. Is the Treasurer aware that his much-vaunted retail contestability for household electricity customers is now almost three months old? Will he inform the House why at least one State-owned electricity company is not able to supply contestable quotes until next month, and why one private company was, until recently, also unable to provide these quotes? Given that full retail contestability commenced on 1 January this year, will the Treasurer investigate why these companies have not offered customers the choice that they were promised by the Government?

The Hon. MICHAEL EGAN: Certainly in relation to the private company referred to by the Deputy Leader of the Opposition, and I am not sure which company that is, there is of course no—

The Hon. Dr Brian Pezzutti: You are not a shareholder of that one, are you?

The Hon. MICHAEL EGAN: No, I am not. There is no obligation on a private company to offer any service, unless required to do so by law. In relation to the State-owned retailers, I will ascertain whether the information conveyed in the question asked by the Deputy Leader of the Opposition is accurate and, if so, I will find out why.

The Hon. Dr Brian Pezzutti: At least say you are embarrassed.

The Hon. MICHAEL EGAN: I am not embarrassed. The Deputy Leader of the Opposition said that retail contestability is three months old. At some stage it will be three years old and at some stage it will be thirty years old. We will know down the track how successful it has been in providing competitive pressure.

The Hon. John Della Bosca: It has been a smooth introduction.

The Hon. MICHAEL EGAN: It has been a very smooth introduction, as my colleague the Special Minister of State pointed out, notwithstanding all the dire predictions of the Opposition. Honourable members will recall the dire predictions about the electricity tariff equalisation fund. We have not heard a whisper out of the Opposition for months.

MULTIPLE CHEMICAL SENSITIVITY

The Hon. ALAN CORBETT: My question is to the Minister for Industrial Relations. What was the outcome of recent meetings between WorkCover New South Wales and environmental medicine specialists and toxicologists with respect to the assessment, early intervention and rehabilitation of workers with chemical injury and/or multiple chemical sensitivity?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for his ongoing interest in the occupational health and safety implications of multiple chemical sensitivity. Following representations from the Hon. Alan Corbett I requested that WorkCover look into multiple chemical sensitivity and the way in which people who complain of this disorder are treated. WorkCover met with the health practitioners who are known to take a special interest in this syndrome to establish what is being done and what can be done to improve the care of people who present with this problem.

While differences exist among practitioners as to exactly what the condition should be called, what the precipitating events are or how best to treat the symptoms, I am informed that all agree that the one area that could be improved is more sensitively managing the individuals presenting with the problem. The approach advocated is what the injury management provisions of the workers compensation legislation are intended to achieve. That approach is to obtain the best possible medical assessment and intervention to ensure that the person is able to remain at work in an environment that allows time for recovery and can provide a durable return to work. Sometimes this can require alterations to the workplace and work processes. Less frequently it may require the person to look to new employment with a new employer.

I advised the House last year of a pilot program that WorkCover was conducting with the general practitioners on better management of acute low back pain, in recognition of the pivotal role that general practitioners play as the first point of contact for a worker who is injured at work. I am pleased to advise that this pilot program proved successful in developing a clinical guideline that met with approval from the participating general practitioners. The general practitioners also appreciated the information provided on how to better care for their patients within the workers compensation environment. One of the critical lessons to come from that pilot program is that all the parties who can influence the outcome of a workers compensation claim must have access to the best and same information. As with low back pain, improved treatment of people who present with other symptoms such as chemical sensitivity requires that the general practitioner, the insurer, the employer and the worker be provided with consistent advice and information. In the light of this, WorkCover will now be working with the occupational physicians to develop guidance material on the better care of workers who complain of persisting symptoms following exposure to chemicals.

POLICE SERVICE EXAMINATION QUESTIONS

The Hon. HENRY TSANG: Does the Minister for Police have additional information regarding the decision by New South Wales police to publish questions for prequalifying assessment for police promotions?

The Hon. MICHAEL COSTA: Prequalifying assessment [PQA] tests are examinations conducted to assess an individual's technical knowledge to apply for promotion. There are currently more than 400 questions that can be asked, including some 82 that test mandatory criteria such as equal employment opportunity and occupational health and safety issues. This bank of questions is constantly being added to for future rounds of the prequalifying assessment. The actual test consists of 50 questions for sergeant level, 60 for inspector level and 70 for superintendent level. All questions are drawn randomly from the bank of 400 questions with eight in each test being drawn from the mandatory questions. On Thursday 7 March a journalist contacted my office suggesting that the tests had been provided to other individuals. Immediately the information was relayed to police for investigation. Police inquiries concluded that the information was wrong. As stated by New South Wales Police on Tuesday 12 March:

> NSW Police have investigated claims that Pre-Qualifying Assessment questions were improperly released.
>
> The investigations have concluded this did not happen.

As part of the preparation of PQA questions were developed and used in a pilot of the prequalifying assessment. Some of the sample questions were distributed to a select group of police officers for the purpose of trialling the PQA process. These questions are not being used in the current bank of questions for examination. The dates of the PQA trials were 21, 22 and 25 February and 1 and 8 March 2002.

Given the dates in question, the provision of the sample PQAs may well have been the mistaken source of the alleged problem. In relation to the publication of the questions, the tripartite committee with members of

the police, the Police Association and the police ministry supported the publication of questions in advance to assist those studying for the test. The previous process was proving too onerous for police who wanted to achieve prequalification for promotion. This in-principle agreement was made on 18 February prior to the receipt of information regarding an alleged compromise of the test. This resulted in the PQA being postponed by one week to allow police officers to prepare for the PQA. This is the explanation. Any person who regards it as unsatisfactory may refer the matter to the Police Integrity Commission.

FOSSICKING RESTRICTIONS

The Hon. MALCOLM JONES: My question is to the Minister for Mineral Resources. Is it the Minister's intention to make the rules for fossicking so prescriptive and difficult to comply with as to make this activity virtually impossible?

The Hon. EDDIE OBEID: The answer to that very specific question is no.

STATE BUDGET

The Hon. PATRICIA FORSYTHE: My question is to the Treasurer. Now that Access Economics has labelled his budget as difficult to assess independently because it fails to comply with International Monetary Fund [IMF] guidelines and the Commonwealth Charter of Budget Honesty, and criticises him for failing to have a charter of budget honesty, will he now commit to ensuring that the State budget process is transparent, open and honest? If he is not prepared to comply with those guidelines and charters, can he tell the House what he has to hide?

The Hon. MICHAEL EGAN: I have to admit that I have never heard of any IMF guidelines. Members, I would have thought, would be well aware that well before the Commonwealth Government's charter of fiscal responsibility, we introduced in New South Wales, as part of my very first budget, the General Government Debt Elimination Act. The Act provides that our budgets are presented not according to IMF guidelines that nobody has ever heard of before but according to the principles set by the Australian Bureau of Statistics and according to Australian accounting standards. The reason for that is so all financial statements of Australian governments are comparable, so we can compare Queensland's with those of New South Wales and Victoria and the Commonwealth.

The Hon. Patricia Forsythe: So Access got it wrong, is that what you are saying?

The Hon. MICHAEL EGAN: Of course, Access got it wrong. The General Government Debt Elimination Act not only provides that we progress towards the elimination of general government net debt by the year 2020, it also requires a number of things to happen. It requires that we provide our budget estimates not only for the year in question but on a rolling three-year estimates basis.

The Hon. Dr Brian Pezzutti: You have not done that yet.

The Hon. MICHAEL EGAN: We do that every year. It requires that we provide projected accrual financial statements for the budget year, a projected statement of financial position, an operating statement, a cash flow statement and reconciliation of the cash and accrual presentation. It provides for monthly finance statistics, half-yearly statements and the annual consolidated financial statement. All these things are public documents. The Auditor-General audits our financial statements. What the Opposition does not tell us is that only a week or two ago, on 6 March, Standard and Poor's issued its credit ratings. The credit rating for New South Wales was reaffirmed as triple-A. I would like to read some of the comments which Standard and Poor's made:

> The local currency rating affirmation reflects the continuing good financial performance of the State's public sector and the strengthening of the State's already good balance sheet.

By the way, it is a local currency rating. We do not have a triple-A rating for foreign currency ratings because the Federal Government does not have a triple-A rating and we have to cop whatever rating it has. This is the party of the $5 billion worth of foreign exchange losses as well as the party that bugged the telephones of Opposition shadow Ministers. It is also the party that concocted documents in relation to a judge of the High Court of Australia. It goes on to say:

> Underpinning the State's triple-A local currency rating is a very strong fiscal position of the general government sector. Strong revenue flows from the buoyant economy and the conservative fiscal policies will see fiscal 2002 produce the sixth—

[*Time expired.*]

I seek leave to continue my answer.

Leave not granted.

SENATOR HEFFERNAN CRIMINAL OFFENCES ALLEGATIONS

The Hon. PETER PRIMROSE: My question without notice is addressed to the Minister for Police. What is the latest information about the allegations raised by Federal Senator Bill Heffernan?

The Hon. John Ryan: Don't forget to look at the TV camera.

The Hon. MICHAEL COSTA: This is important! Today police advise that the material forwarded by Senator Heffernan to the New South Wales Police Service was received on 18 March. The material has been carefully assessed by investigators from the Child Protection Enforcement Agency with legal advice provided by court and legal services. The material supplied included an alleged Comcar driver's log and a statutory declaration. Yesterday New South Wales police also received from Mr Laurie Brereton, Federal member of Parliament, a transcript of a media conference that he held in Canberra.

Also on 18 March the Prime Minister sought and received a briefing from the Commissioner of Police, Peter Ryan, and former Superintendent Woodhouse on the findings of Strike Force Cori. This investigation included an examination of the allegations. Following a thorough assessment of the material it has been determined that there is no basis for any further investigation by New South Wales police into any offence alleged to have been committed in this State. The material provided regarding the alleged use of Commonwealth vehicles and documents pertaining to the use of Commonwealth vehicles has been referred to the Australian Federal Police.

COLLEX PTY LTD WASTE TRANSFER DEPOT

The Hon. RICHARD JONES: My question is to the Minister Assisting the Minister for the Environment. Has Collex Pty Ltd been forced to develop a waste transfer and containerisation terminal within the Clyde railyards in the Auburn local government area as a result of refusal by Waste Service New South Wales to enter negotiations with Collex to use existing capacity within its transfer stations across Sydney? Would it not be more beneficial to use existing transfer stations than forcing Collex into the expense of developing its own transfer station? Will the waste transferred by Collex be treated in the most environmentally beneficial way? Will usable waste be separated from unusable waste, resulting in a substantial supply of compost for landscaping and farming? Should not the Government therefore get behind a proposal that is more beneficial than the existing disposal of such waste?

The Hon. CARMEL TEBBUTT: I am advised that complex negotiations are ongoing between Waste Service New South Wales and Collex Pty Ltd regarding access by Collex to waste service transfer stations. Waste Service needs to ensure that any agreement is satisfactory on commercial, environmental and operational grounds—I am sure that the Hon. Richard Jones would agree with that. I hope that an outcome will soon be known. Regarding the Clyde transfer station, the Government is aware of community concerns regarding the potential for impacts on the environment and human health caused by waste facilities.

Collex, the proponent of a waste transfer terminal in Clyde, has submitted a revised development application to the Minister for Planning, which is currently being considered. As part of the integrated development approval process I am advised that the Environment Protection Authority has raised the need for Collex to minimise odour and noise associated with the proposal. If the proposal proceeds it will be subject to an environment protection licence issued by the Environment Protection Authority, which will have stringent conditions that address noise and odour problems.

INLAND LAKES COMMERCIAL FISHING

The Hon. JENNIFER GARDINER: My question is to the Minister for Fisheries. What consultation had New South Wales Fisheries undertaken with inland commercial fishers—whom he had closed out of the inland fishery and has now invited back in by tender—to deal with potential large-scale native fish kills in far-western lakes due to the drying out of the lakes? What consultation was there with the fishers, who have been redirected into carp and yabby fishing, in respect of the Minister's decision to invite amateur anglers to also tender for the opportunity to remove native fish from drying lakes?

The Hon. EDDIE OBEID: To bring the Hon. Jennifer Gardiner up to date, the inland commercial fishers were dealt with by legislation some years ago. The legislation had a sunset clause relating to the time limit on fishing in that area. A model for compensation was available to them and an option they had was to take

up a yabby and carp licence. The Government allocated more than a million dollars to fund the carp fishing issues. It is obvious that some commercial fishers took up the carp and yabby licence and fished for the species to which they were entitled.

As the Hon. Jennifer Gardiner said, there was a fish kill and members of the commercial sector wanted to take native fish out of that area. As a consequence the Government did that, through a process of licensed commercial fishers. In the circumstances, in Teryaweyna Lake it would have been tantamount to letting down that community if the Government did not give them the first option. Of course, if they cannot do the job it would be fair and equitable that others enter the area and take out the fish. That is the beginning and the end of it.

The Government does not have a final policy for fish kills, but when that happens obviously it would be better to make sure that those licensed to fish commercially do so, but only for carp or yabby. However, special consideration will always be given when there is a possibility of a fish kill, as referred to by the Hon. Jennifer Gardiner. In those circumstances, fish will not be utilised by the community. I am advised that recent trading in yabby and carp fishing licences has been in the vicinity of $80,000 to $100,000, which means that inland commercial fishers who took up the option of acquiring a licence have done extremely well. That was good value, assisted by the efforts of the Government.

Carp is a well-accepted product in the marketplace. I am sure that the Hon. Jennifer Gardiner would have taken out a few carp in her days on the farm. It is only fair and proper that in the event of a fish kill the first opportunity was given to the commercial fishers who have a licence to take out carp and yabbies. However if they did not take up that opportunity, it would have been offered at open tender.

SECURITY INDUSTRY EMPLOYEE ENTITLEMENTS

The Hon. IAN WEST: My question without notice is to the Minister for Industrial Relations. What is the situation about the recovery of unpaid wages for New South Wales security guards?

The Hon. JOHN DELLA BOSCA: In the past four months the Department of Industrial Relations has recovered $32,000 in unpaid wages for security officers across the State. Most of the back payments were for overtime, penalty rates and annual leave entitlements. The largest sum recovered was for a Warners Bay security officer who received $10,000 in wages and holiday pay. Most employers understand their legal obligations to pay award wages and to provide paid annual leave but the Department of Industrial Relations has discovered that some security companies are paying their officers less than their full entitlements. Not only is this unfair to the employees concerned, it is unfair to those employers who do the right thing and abide by the law.

Over the past four months the Department of Industrial Relations has acted on complaints by at least 12 security officers throughout New South Wales. One complaint involved three employees of a Sydney central business district security firm who were advised incorrectly of their pay rates by their employer. As a result of the department's intervention they have been back paid more than $6,300 in overtime, penalty rates and holiday pay. Department officers recovered more than $5,400 for a security guard in Belrose for underpayment of penalty rates, meal allowances and public holiday pay. After settlement of a dispute over non-payment of overtime, a security guard in Tamworth received more than $3,400.

Despite the wide range of information that the department provides through its publications, education campaigns and phone and Internet services, some employers still ignore minimum employment standards. Employers can face penalties of up to $10,000 for underpaying employees. Courts can also order employers to repay lost wages, plus interest. If any employee or employer requires information about their legal rights and obligations, they should contact the department's hotline on 130205 or visit the department's web site at *www.dir.nsw.gov.au*.

STATE BUDGET

Reverend the Hon. FRED NILE: I wish to ask the Treasurer, Minister for State Development, and Vice-President of the Executive Council a question without notice. Is it the fact that Access Economics has reported that New South Wales' fiscal reporting does not comply with the International Monetary Fund or the Commonwealth Charter on Budget Honesty? Is it a fact that Access Economics stated that "it is difficult to make independent assessments of NSW's fiscal prospects because of a lack of transparency in the books"? Will

the Treasurer please explain why, according to Access Economics, New South Wales falls behind other States, such as Western Australia, Queensland and Victoria, in fiscal transparency? What action is the Government taking to rectify this anomaly in fiscal reporting, which is now outdated in comparison to fiscal reporting in other States?

The Hon. MICHAEL EGAN: That question is very similar to the one asked by the Hon. Patricia Forsythe. As I was pointing out, the New South Wales Government applies the principles established by the Australian Bureau of Statistics and also the Australian accounting standards. They are encapsulated in the General Government Debt Elimination Act, which the Government introduced and the Parliament enacted in 1995.

Reverend the Hon. Fred Nile: It is now 2002. That means those standards are outdated.

The Hon. MICHAEL EGAN: No, they are not. There is some overlapping between the requirements of the General Government Debt Elimination Act and the Public Finance and Audit Act 1983. I think it will be worth the Parliament's while at some stage to remove that overlapping, but the information required by the General Government Debt Elimination Act makes New South Wales the pacesetter in fiscal responsibility. Certainly, we were there well before the Federal Government's Charter of Fiscal Responsibility Act and I think our legislation has stood us in good stead.

I point out that Standard and Poor's reported only a few weeks ago that stronger revenue flows from a buoyant economy and the conservative fiscal policies of the Government will see fiscal 2002 produce the sixth successive cash surplus, an unprecedented outcome. Standard and Poor's goes on to report that since fiscal 1962, when consistent records began, only two cash surpluses were achieved and those were not in successive years—in other words, six successive surpluses in New South Wales over the last six years compared with only two previous surpluses, and they were years apart.

The Hon. John Ryan: If you had not had revenue growth you would not have had those surpluses.

The Hon. MICHAEL EGAN: Standard and Poor's says that it is due not only to a buoyant economy but also to conservative fiscal policies, and that is true.

The Hon. John Ryan: The Auditor-General does not agree.

The Hon. MICHAEL EGAN: You should not verbal the Auditor-General.

The Hon. John Ryan: He says you have spent more than your revenue growth allowed.

The Hon. MICHAEL EGAN: How could we spend more than our revenue growth allows if for the first time each year we not only have a cash surplus but we also have a net fiscal balance and a very healthy operating balance? We are the only government in Australia to consistently achieve surpluses on all three budget measures. Standard and Poor's goes on to say that net financial liabilities—that is net debt plus unfunded superannuation liabilities—of the total public sector as at 30 June 2001 was 60 per cent of operating revenue compared with 84.5 per cent as at 30 June 1998, while net debt was a moderate 41.8 per cent of revenue as at 30 June 2001 compared with 50.8 per cent as at 30 June 1998. Standard and Poor's further states that with debt and other liabilities already moderately low and with ongoing cash surpluses forecast in the general government sector, the credit strength of New South Wales will likely increase. That is great testimony to a great fiscal record in New South Wales.

The Hon. John Ryan: It is because of a growth in stamp duty.

The Hon. MICHAEL EGAN: Stamp duty has gone up, that is right, but stamp duty is a volatile source of revenue. However, the Commonwealth Government's stamp duty has also gone up. There is no problem with a growing buoyant economy, but when additional resources become available we will use those resources to improve our schools, hospitals and police enforcement. Do not ever think for one minute that the Government has run out of things to do or improvements to make. We will make sure those improvements are made. [*Time expired.*]

POLICE OFFICERS SICK LEAVE

The Hon. JOHN RYAN: My question is to the Minister for Police. What is the Government doing to address the high numbers of police officers on sick leave across the State, especially in rural and regional areas where police assistance often has to come from a neighbouring centre? Considering that almost 700 officers are currently on sick leave in New South Wales, what measures are in place to ensure that communities are served by adequate police numbers?

The Hon. MICHAEL COSTA: I welcome the question. I think it is the first one I have welcomed from the honourable member. It is a good question and the Government takes the long-term sick leave of police officers very seriously. We have undertaken a number of discussions with the Police Association about the matter and we are looking at strategies to do with rehabilitation. Honourable members would appreciate that being a police officer is a very stressful occupation. Unfortunately, many of our officers over time do succumb to the accumulated experience of being on the job and that does result in them going on long-term sick leave. We will sit down continually with the association and monitor the situation to find an appropriate medical mechanism to deal with these problems.

In relation to adequate police numbers, I am glad that the honourable member has raised that because I am proud once again to inform the public of New South Wales that New South Wales has a record police budget of $1.6 billion—and I thank the Treasurer again for his support of policing in this State—and 13,600 police officers, a record number. The Government is also committed to 14,400 police by December 2003. This Government always meets its commitments. Therefore, we have had to open a second campus at Hawkesbury, part of the University of Western Sydney, to train an additional 800 potential police officers. This means that we will more than meet our commitment to policing and there will always be adequate police numbers. As the honourable member knows, we have minimum first response agreements, which determine the minimum staffing for each of our local area commands, and it is mandatory that they be met.

BAIL LAWS

The Hon. RON DYER: My question is directed to the Minister for Police. What is the latest information on the Government's plans to change the bail laws?

The Hon. MICHAEL COSTA: That is a very good question. It gives me great pleasure to announce the Government's latest measure for dealing with crime in this State, which I am sure all police officers will welcome. Police advise that repeat offenders are responsible for 80 per cent to 90 per cent of crime in this State. Targeting individual offences is only part of the solution.

The Hon. Michael Gallacher: Point of order: I recollect that the Governor announced in her Speech that the Government will address the issue of bail laws in this parliamentary session. This question clearly seeks an expression of government policy, which is in breach of the sessional orders that were adopted recently.

The Hon. MICHAEL COSTA: Those opposite are worried about all the good news in policing.

The PRESIDENT: Order! I remind the Minister that the relevant sessional order states that a "question must not ask … for a statement or announcement of the government's policy". The Minister may continue.

The Hon. Michael Gallacher: Follow the rules.

The Hon. MICHAEL COSTA: I am answering the question. Those opposite could have introduced a similar measure when in government but they chose not to do so and now they are embarrassed. We must target offenders. This means arresting repeat offenders and presenting their criminal histories to the courts. It means that courts need to understand that the person before them is a repeat offender. It means that offenders must receive harsher treatment from the courts, and it means that repeat offenders must be established in law as a special class of offenders who are not entitled to the same presumptions as others. That is why tomorrow the Attorney General will introduce new bail laws to remove the presumption in favour of bail for any person who is charged with an offence whilst on bail.

[*Interruption*]

The PRESIDENT: Order! I remind the Minister for Police again that the sessional order is quite clear: a question must not ask for a statement or announcement of the Government's policy.

The Hon. MICHAEL COSTA: I am answering the question asked of me. The new laws will remove the presumption in favour of bail for any person who is charged with any offence whilst on a good behaviour bond or on parole.

The Hon. Michael Gallacher: Further to the point of order: It is obvious that the Minister for Police is disregarding your advice about anticipating and stating government policy. It is clear that he will continue to put his points on the record. Madam President, I ask that you draw the Minister's attention to the rulings that you have made on two prior occasions and ask him to sit down if he has nothing further to add.

The Hon. Michael Egan: To the point of order: If the question is in order the Minister is entitled to answer it.

The Hon. John Ryan: It wasn't in order.

The Hon. Michael Egan: In that case the question should have been ruled out of order. However, it was not ruled out of order.

The Hon. John Jobling: To the point of order: The Minister has stated that the Government intends to take certain actions tomorrow. Madam President, you indicated clearly in your earlier rulings in relation to sessional orders that that is out of order. In replying to the question, the Minister has continued to outline, point by point, what will be in the legislation to be introduced in the House tomorrow and in so doing is wilfully and deliberately flouting your ruling. I suggest that he should not be allowed to continue his answer.

The PRESIDENT: Order! I was not directing the Minister; I was reminding him of the requirement of the sessional order, which states clearly what may be asked. The question may have been out of order, but no point of order was taken with regard to it when it was asked.

The Hon. Duncan Gay: You have a responsibility there, Madam President.

The PRESIDENT: Order! The member will not canvass my ruling. Sessional orders state:

5. An answer must be relevant to a question.

6. In answering a question a Member must not debate the question.

The Minister for Police pointed out that he was simply answering the question. This means that he was giving an answer in compliance with the sessional orders, which state that an answer must be relevant to the question. It appears to me that the question may well have been out of order but, once the question was asked, the answer was in order.

WORKERS COMPENSATION COMMISSION PRESIDENT

Ms LEE RHIANNON: My question is directed to the Minister for Industrial Relations. Is it true that the recently elected president of the Workers Compensation Commission is being paid $245,435 per annum? Is this amount greater than the amount paid to any other judicial officer in the State except the president of the New South Wales Court of Appeal? Is this pay part of the Minister's "fairer, faster, simpler" approach to workers compensation?

The Hon. JOHN DELLA BOSCA: I am not sure what Ms Lee Rhiannon is driving at in her question. As to the relativities of other judicial salaries, I can provide that information to the honourable member at some future point. As to the remuneration of the president and the deputy presidents of the Workers Compensation Commission, I believe Ms Lee Rhiannon shared the view—which was championed in many quarters—that it was quite important for the Workers Compensation Commission to comprise officers of senior judicial status to arbitrate and to bring judicial indications to bear on its work. It is a little contradictory for Ms Lee Rhiannon to advocate in the Chamber that paying the commission's president a judge's salary is inappropriate when she is of the school of thought that argues it is important that the Workers Compensation Commission continue to be arbitrated by judges. That seems to me to be a slightly inconsistent line of argument. However, Ms Lee Rhiannon is entitled to her opinions—although they may vary from time to time. I am happy to provide at a future time the information that she requests.

WORKERS COMPENSATION COMMISSION ARBITRATORS RECRUITMENT

The Hon. GREG PEARCE: My question is directed to the Minister for Industrial Relations. What action has the Minister taken to expedite the recruitment of arbitrators to the Workers Compensation Commission given media reports that successful applicants will not start hearing cases until June? Has the Minister raised concerns with Justice Sheahan about these delays? Will he give an undertaking to the House that these delays will not result in unnecessary hardship to injured workers and extra cost to the scheme?

The Hon. JOHN DELLA BOSCA: I preface my answer by indicating that there is a general level of satisfaction with the early settling-in of the new Workers Compensation Commission. A consensus is already developing among both service providers and interested parties that the commission will provide a much-improved method of resolving workers compensation disputes. From the point of view of employees, injured

workers and employers, the commission—together with the new claims assessment service—appears to offer a very successful framework as a forum allowing for the quick resolution of disputes, and therefore more rapid and satisfactory returns to work. I am happy to provide details of the specific matters about which the Hon. Greg Pearce asked. I think he is aware from some public reporting that it is anticipated that the high priority given to training the new arbitrators properly and other matters will lead to a time lag. I am satisfied that, based on early indications from the commission, the new president, deputy presidents and the registrar have these matters under advisement and close control. I am happy to provide further details about his specific queries.

PHUONG NGO POLICE INVESTIGATIONS

The Hon. AMANDA FAZIO: My question is directed to the Minister for Police. Has the Minister received advice from the police about matters raised today in another place regarding former police investigations into Mr Phuong Ngo?

The Hon. MICHAEL COSTA: Police advise that Mr Phuong Ngo was mentioned in the Cook report but only in general terms. Police advise that, even with the close investigative attention paid to Ngo as a result of the investigation into the murder of Mr Newman, there was no direct evidence linking Mr Ngo to the supply of drugs. Police advise that past and ongoing investigations into the drug trade in the south-west of Sydney have also failed to uncover any direct link to Phuong Ngo. Police further advise that the police force will welcome information from anyone with direct evidence about the matter.

FERNBANK RETIREMENT VILLAGE SERVICES CONTRACT

The Hon. HELEN SHAM-HO: My question without notice is directed to the Special Minister of State, Minister for Industrial Relations, and Assistant Treasurer, representing the Minister for Fair Trading. I refer to the Minister's answer to a question without notice that I asked on 23 October 2001 concerning the drafting of a new services contract between 47 elderly unit owners and the village operator at the Fernbank Retirement Village at St Ives. In particular I note the Minister states that the Department of Fair Trading would assist the parties to facilitate further discussion and negotiations. Will the Minister advise how many times the Department of Fair Trading has consulted the 47 elderly unit owners or their representative since October last year? Given that eight elderly residents who were involved in the Supreme Court action that found the original services contract unenforceable already have died, will the Minister advise what he will do to ensure that the process of negotiating a new services contract with the remaining unit owners is expedited?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for her question, which clearly is a matter of considerable concern to her and to anybody familiar with these facts. I will ask the Minister in the other place to provide an answer as soon as practicable.

BUILDING SITES OCCUPATIONAL HEALTH AND SAFETY BREACHES

The Hon. JOHN JOBLING: My question without notice is to the Minister for Industrial Relations. Is the Minister taking action to allow union officials to issue on-the-spot fines for breaches of occupational health and safety on building sites in this State? Is it a fact that the Government is seeking to achieve building union peace before the State election?

The Hon. JOHN DELLA BOSCA: I am not sure exactly what the honourable member is referring to. He would be aware of the lengthy debate about the role of union officials, site safety committee members and others in respect to the powers of the occupational health and safety legislation. I am sure honourable members are aware of the rumours that have been promulgated by the Leader of the Opposition suggesting that union officials already are empowered, as the question infers, or soon will be empowered to issue on-the-spot fines for breaches of occupational health and safety legislation.

Currently the power to issue an on-the-spot fine under occupational health and safety legislation resides with inspectors of the WorkCover Authority. For a union official to be able to issue an on-the-spot fine the Occupational Health and Safety Regulation 2001 would need to be amended. The Government is not contemplating any such amendment to the regulation. However, I emphasise that it is important in these matters that honourable members understand properly what is happening under this Government with occupational health and safety, and to understand the new regime, which was introduced by the Act and the new regulation and put in place by my predecessor.

Across what used to be the employer/employee divide there is consensus on the important priority of occupational health and safety. All responsible employers and most, if not all, responsible union members and other employees have gone beyond destructive and old-fashioned approaches, such as spreading rumours about

who is going to fine whom, and are looking at practical ways of securing much safer workplaces across the State. I thank the honourable member for his question and for the opportunity to place on record the work this Government and the WorkCover Authority have been doing to sponsor a more responsible approach to occupational health and safety by both employers and employees.

WORKCOVER CLAIMS ASSISTANCE SERVICE

The Hon. JANELLE SAFFIN: My question without notice is directed to the Special Minister of State, and Minister for Industrial Relations. Will the Minister please inform the House whether the claims assistance service, which was proposed in the recent workers compensation reforms, has commenced operation?

The Hon. JOHN DELLA BOSCA: I thank the Hon. Janelle Saffin for her question about the claims assistance service, which was a matter I mentioned in passing when answering an earlier question. Honourable members are aware that many of the recent reforms of the workers compensation system were aimed at reducing the overall number of disputes and providing for the timely and cost-effective resolution of disputes that arise from time to time. Under the previous system New South Wales had the highest rate of disputed workers compensation claims in Australia. Almost half of all disputes arose from delays in decisions by insurers. A key initiative of the Government's reforms was the creation of a claims assistance service within WorkCover to provide specialised assistance to injured workers and employers about injury notification and claims for injury compensation.

The claims assistance service commenced on 1 January this year. Initially it is being trialled as a telephone-based service providing an interface between the injured worker, the employer and the insurer. Workers compensation can be daunting for an injured worker. Similarly, an injury at work impacts on the workplace, and many employers often are unsure of their obligations. Many disputes arise simply because they do not know what is required of them or what they are supposed to do. Intervention by an objective service such as the claims assistance service at an early stage can prevent these disputes developing and affecting the injured worker, and disrupting the workplace.

The claims assistance service is acting impartially to help each party to a workers compensation claim, that is, the injured worker, the employer and the insurer. Staff at the claims assistance service seek to help the parties to meet their responsibilities under the legislation when the normal processes are frustrated by one or more of the parties. I can advise honourable members that the early indications from the claims assistance service are encouraging. Up to 28 February 2002, 756 disputes had been referred, with more than 88 per cent of them already resolved. For January and February the most common disputes involved payment of workers benefits, difficulties with insurers, early injury notification and difficulties with employers.

I am proud to relate to honourable members an example of how the claims assistance service staff go the extra mile to help clients. This case involved a profoundly deaf person who had experienced long-running problems communicating with the insurance company. As a result of about 2½ hours of direct help from a claims assistance officer, the matter was resolved and the injured worker received his full entitlements. This assistance came to notice when the injured worker congratulated the officer, Ms Minette Jordan, on being awarded the Public Service Medal in the Australia Day Honours. With the intervention of the claims assistance service together with other reforms, I am confident we will see a much fairer, faster and simpler method of resolving disputes in the workers compensation system.

SENATOR HEFFERNAN CRIMINAL OFFENCES ALLEGATIONS

The Hon. PETER BREEN: My question is to the Minister for Police. Is the Minister aware of a report in yesterday's *Australian* by Glen Milne to the effect that Senator Bill Heffernan told colleagues in March 1999 that Commissioner of Police Peter Ryan and Superintendent Mike Woodhouse went to see Chief Justice Murray Gleeson? Is the Minister aware also that a spokesman for Commissioner Ryan confirmed the meeting with the Chief Justice and gave as the reason for the meeting the commissioner's wish to inform the Chief Justice of the outcome of certain police investigations into Justice Michael Kirby? Can the Minister explain to the House why Commissioner Ryan and Superintendent Woodhouse considered it necessary to report to the Chief Justice about the outcome of police investigations?

The Hon. MICHAEL COSTA: I am not aware of that particular report. I will take the question on notice and report back to the House.

WOY WOY RAILWAY STATION CAR PARK SECURITY

The Hon. Dr BRIAN PEZZUTTI: My question without notice is to the Minister for Police. What action will be taken to protect commuters at Woy Woy railway commuter car park whose vehicles are being repeatedly stolen and vandalised despite police claims that the car park is under constant video surveillance?

The Hon. MICHAEL COSTA: I will refer the honourable member's question to the appropriate people within the police force and get a detailed answer.

The Hon. Dr Brian Pezzutti: The service, the Police Service.

The Hon. MICHAEL COSTA: Police force. The honourable member's question gives me an opportunity to talk about some of the initiatives we are looking at to deal with this problem. One I would like to highlight is our changes to the bail laws, and it is very important to talk about these changes to the bail laws. The Government will introduce—

The Hon. Dr Brian Pezzutti: Point of order: The answer is not relevant.

The PRESIDENT: Order! There is no point of order. The Minister was answering the question. One of the reasons he gave for an improvement of the position at Woy Woy railway station car park in future is the bail legislation.

The Hon. MICHAEL COSTA: As I was saying, it is—

The Hon. John Ryan: Point of order: The Minister is now proceeding to answer part of the question by saying he wishes to refer to the Government's changes to the bail laws. We know from statements made in the other place, and in fact in this place—particularly in regard to the Speech given by Her Excellency the Governor in this place—that the Government intends to make some changes to the bail laws. The Minister is now seeking to divert the question to anticipate debate, which is about to occur, in regard to that matter.

The matter was canvassed in Her Excellency's Speech. The Minister is at least anticipating debate on that subject, but he is also anticipating debate that will obviously occur when the Government introduces that legislation in due course and seeks to have it debated by this House. The Minister has other forms by which he can raise this matter, such as a ministerial statement. I draw your attention, Madam President, to rulings of previous Presidents in regard to anticipating debate. President Hay made at least two ruling about anticipating debate, the purpose of which were to ensure that members did not ask questions about matter that would not be subject to appropriate debate. Obviously, that is what the Minister is attempting to do. I would ask you to ensure that the Minister does not attempt—

The Hon. Michael Costa: How unfair!

The Hon. John Ryan: It is not unfair at all. The Minister is trying to anticipate debate and announce Government policy in the guise of some sort of misrepresentation of an answer. You should draw him to order.

The PRESIDENT: Order! I remind the Minister that any statements he makes in his answer must relate to the question about the Woy Woy railway station car park.

The Hon. MICHAEL COSTA: That is precisely what I was trying to do. I was asked what I was going to do about crime around Woy Woy car park. One of the things I will do is change the bail laws in this State to have the toughest bail regime in the country.

The Hon. Dr Brian Pezzutti: Point of order: I draw your attention to the fact that before the Bail Act can be applied, the Hon. Michael Costa's police have to arrest offenders and charge them before they become eligible for bail. The answer is irrelevant.

The PRESIDENT: Order! The Minister must be able to answer the question, which referred to crime at the Woy Woy railway station car park. A course of action was being outlined to prevent crime at the car park. The Minister is in order in answering the question; however, his time for doing so has expired.

The Hon. MICHAEL EGAN: If honourable members have further questions, I suggest they put them on notice.

LINNWOOD HALL BREAK-IN

The Hon. CARMEL TEBBUTT: The Hon. Dr Arthur Chesterfield-Evans asked me a question about Linnwood Hall. I wish to inform him that I am informed that the Department of Community Services was advised by its security firm on 10 March of the break-in. I am advised that repairs were effected the following day. In regard to the report that the alarm system was not functioning, I am advised that the department is awaiting a further report from the security company. The Department of Community Services carries out essential repairs to Linnwood Hall property as required. It has in place a monitored fire and intruder alarm system. In addition, Holroyd City Council has extended its security patrols to cover the Linnwood site.

Questions without notice concluded.

JOINT SELECT COMMITTEE ON BUSHFIRES

Appointment

Consideration of the Legislative Assembly's message of 12 March.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [5.05 p.m.]: I move:

1. That this House agrees to the resolution in the Legislative Assembly's message of 12 March 2002, relating to the appointment of the Joint Select Committee on Bushfires, with the following amendment, in which amendment the concurrence of the Legislative Assembly is requested:

   Paragraph 3. Omit the paragraph, insert instead:

   (3) That the Committee consist of seven members comprising:

   (a) four members of the Legislative Assembly, of whom:

   (i) two must be Government members

   (ii) one must be an Opposition member

   (iii) one must be an Independent member,

   nominated in writing to the Clerk of the Legislative Assembly by the relevant party leaders and the Independent members respectively by Monday 18 March 2002,

   (b) three members of the Legislative Council, of whom:

   (i) one must be a Government member

   (ii) one must be an Opposition member

   (iii) one must be a Crossbench member.

2. That the Legislative Council members of the Committee be Mr Kelly, Mr Colless and Mr Tingle.

3. That the time and place of the first meeting of the Committee be at 9.30 a.m. on Wednesday 20 March 2002 in room 1043.

The bushfire season we witnessed last December and January was almost unprecedented in the recorded history of fire fighting. Over the last 60 years New South Wales has recorded very large fires in extreme weather conditions at around every 10 years. These fires are part of a pattern that has existed in Australia for thousands of years. Over the past few decades, however, our scientific understanding of fire behaviour and ecology has been increasing steadily. We know that the forests of south-east Australia are, by world standards, exceedingly fire prone, and that the fires that frequently ravage our forests reach unrivalled intensities. We also know that there are no simple solutions to our bushfires.

However, what we do know is that weather conditions prevailing during the recent bushfire crisis in and around the Sydney Basin went beyond those recorded in previous emergencies. The period between mid-December and mid-January was extraordinary: almost unprecedented low levels of humidity and 20 days straight without rain. The bushfire danger index, the most reliable measure of weather conditions prevailing during our fire season, recorded very high to extreme fire danger for 18 days straight. To put that in some perspective, the previous record during the bushfire crisis—the 1994 fire emergency—was four straight days of very high to extreme fire danger. The recent fire fighting effort was a major and historic achievement. The men and women who fought in that campaign on the front line, in planning, communications, catering and welfare achieved something unique.

They faced flames of unparalleled ferocity and speed, in unforgiving weather conditions. They were striving to defend thousands of homes built deep into the bushland, strung out along ridges and in exposed cul de sacs—and in thousands and thousands of cases they succeeded. In fact, while any loss is tragic, our firefighters lost half the number of homes that were lost in the previous major fires, in 1994. And no firefighter or civilian perished. That is an achievement at which overseas firefighting experts can only shake their heads in wonder. An army of volunteers and paid workers worked side by side. Volunteer forces of this type are almost unique to Australia, and in New South Wales we have now achieved a standard openly admired by other jurisdictions.

Indeed, the level of co-operation between our own highly trained volunteers and their counterparts in other States was readily demonstrated during the recent fires when volunteers from Victoria, Queensland, South Australia, Tasmania and the Northern Territory came to our aid to put their lives on the line. Our own volunteers stand ready to reciprocate, as they have done on many previous occasions. We have to manage fire properly—both for reasons of biodiversity and property protection. But we cannot reasonably expect to prevent altogether the regular and violent outbreak of wildfires in extreme weather conditions. We must learn to live with them and to make the best plans to mitigate their effects and to fight them effectively when they occur.

By any measure our ability to do just that—prepare for them meticulously and fight them effectively—has improved immeasurably since the last widespread disaster in 1994. This Government has put in place a modern Rural Fires Act, integrating brigades throughout the State into one cohesive force with a proper chain of command. We have upgraded equipment and swept away yesterday's technology. Over the two terms of this Government, $155 million has been allocated for the purchase of almost 2,000 new and upgraded diesel-fuelled tankers. Hundreds of new and renovated rural fire stations have been built, and a dedicated Rural Fire Service local radio network complements the statewide Government Radio Network. The results are there for all to see.

As I said, this year we lost only half the number of homes that were lost in 1994, and considerably less bushland was burned. Most importantly, no firefighter or civilian perished in the flames, while four tragically died in 1994. As part of the reforms made in the Rural Fires Act in 1997, the Government has established some 124 local District Bush Fire Management committees. These committees bring together representatives of the fire services, major public land managers such as State Forests, the National Parks and Wildlife Service, Land and Water Conservation, the Police Service, local councils, and the community—including farmers and environmentalists. These committees are the most effective way to plan for bushfires across all land tenures—public and private—and to ensure proper co-ordination at both a local and statewide level.

The main task of these committees is to prepare bushfire risk management plans, which identify important local assets that are at risk from fires, and devise strategies to protect them. As a result of these reforms I can report to the House that bushfire risk management plans have been given final approval by the Bush Fire Co-ordinating Committee for 80 per cent of all districts. Draft plans have been approved for exhibition for the remaining districts. Local District Bush Fire Management committees have been planning hazard reduction on an area-by-area basis. In addition to the Rural Fire Service, many other agencies and land managers are engaged in this work, including the National Parks and Wildlife Service. This ensures that fuel loads are reduced across all land tenures—public and private—on a systematic basis.

These developments have ensured considerable improvements in bushfire planning. The extraordinary success of the recent bushfire operations was underpinned by this Government's massive budget increases to the Rural Fire Service, the Fire Brigades and the National Parks and Wildlife Service. We have significantly increased the State's capacity to both plan properly for bushfires and fight them when they inevitably happen. We have got on with the hard task of developing new policies, modernising management systems and equipment, and putting in place world's best practice for co-ordinated firefighting under a cohesive and professional command structure. The Government has initiated this select committee just as it did from Opposition in 1994. We are eager for this committee to begin its work, receive public submissions, conduct public hearings and form a sensible, balanced view of our record.

The terms of reference for this inquiry are broad enough to encompass everything that needs to be reviewed. Indeed, they are very similar to the terms of reference the Labor Party moved in this House eight years ago, while providing ample scope to explore the policies and practices that have been put in place since then. I am advised that the Coroner will be receiving submissions for his official inquiry at the end of June. The Government has therefore proposed that the select committee should report shortly before that time. This will ensure that there is no overlap between the two processes, and that the Coroner can get on and do his work, free from any suggestion that the Parliament is interfering in or attempting to influence his vitally important work. I commend the motion to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.15 p.m.]: I indicate that the Opposition supports in principle the resolution of the Legislative Assembly. The Hon. Rick Colless, the Coalition's nominee to serve on the committee will speak about the appropriateness of the resolution and the reason for it. I want to speak briefly about the make-up of the committee and the process of determining it. It is interesting to note that the Legislative Assembly resolved in paragraph (2) that the Legislative Council members of the committee will be the Hon. Tony Kelly from the ALP, the Hon. Rick Colless from the Opposition, and the Hon. John Tingle from the crossbench.

The Hon. Rick Colless was nominated by the members of the Opposition and his name was forwarded to the Government. We believe, as one member of this House kindly said, that he is a suitable member to serve on the committee. He was the Opposition's choice. The Hon. Tony Kelly was not our choice; he was chosen by the Government to be a member of the committee, and that is appropriate.

The Opposition does not have a problem with the Hon. John Tingle, because we believe he would be an appropriate choice to serve on the committee, but he is the Government's choice. The Opposition is of the view that the crossbenchers should be allowed to choose their representative to serve on the committee. If they cannot agree, the Opposition will gladly support the nomination of the Hon. John Tingle. As I said, I believe that the crossbenchers should be given an opportunity to choose their representative. I leave it up to them to make that choice.

[*Interruption*]

There is an indication that the crossbench members would appreciate having the time to go away and make that choice.

[*Interruption*]

I am further informed that the crossbench members conducted a ballot but could not reach a majority decision. That being the case, the Opposition was approached by two members and, on balance, we believe that of those two members the Hon. John Tingle would be the better representative to serve on the committee.

The Hon. PETER BREEN [5.17 p.m.]: As the Deputy Leader of the Opposition said, there has been a vote amongst members of the crossbench on who the appropriate crossbench nominee to the committee ought to be. Regrettably, the result of the ballot was tied. I believe that the appropriate outcome would be for the nominee from the crossbench to be voted on by this House. I move:

That the question be amended by:

(1) Omitting paragraph 3 (b) (iii) and inserting instead:

(iii) one crossbench member chosen by ballot in accordance with Standing Order 236.

(2) That paragraph 2 of the motion be amended to reflect the result of the ballot.

Reverend the Hon. FRED NILE [5.18 p.m.]: As other members have said, the ballot conducted by crossbench members was indecisive, in that no nominee received a majority of votes. This seems to be the best way to resolve the issue. I assume that the names of crossbench members who wish to be nominated will now be given to the Clerk and that the House will then indicate its preference for the member of the crossbench to serve on the committee.

The Hon. Duncan Gay: Point of order: We seem to be moving into new ground, an election process, while a motion is still before the House. The question I need to have answered—and I suspect other members of the House are in this position—is: Following the amendment moved by the Hon. Peter Breen, how will the nomination process take place, and have nominations been closed? Perhaps it is a question to put to the Hon. Peter Breen. I apologise, Madam President: I have no format for putting these questions, except on a point of order.

The PRESIDENT: Order! The amendment refers to Standing Order 236, which goes into some detail about the conduct of ballots.

The Hon. John Jobling: Just for clarification, this is an amendment to the motion. Therefore, if it is carried there would be a ballot pursuant to Standing Order 236, but if it is lost we would revert to the motion.

The PRESIDENT: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.21 p.m.]: With regard to the nomination process, I would suggest that the two people who tied the ballot from the crossbench, the Hon. Malcolm Jones and the Hon. Ian Cohen, should be the only two nominations received, because they did top the ballot and thus would have been the only two who could have been elected. They should be the only two nominations considered by the House.

The PRESIDENT: Is the Hon. Dr Arthur Chesterfield-Evans moving an amendment to the motion?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I think that might be the best thing to do. I nominate the two people who tied the ballot.

The PRESIDENT: Order! There is not a nomination process yet. We must resolve how to choose the crossbench member of the committee. If the member has an amendment to the procedure, he should put it in writing and hand it to the Clerk.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.23 p.m.]: To alleviate some of the dispute I suggest we deal with the amendment and then have a vote. Then there can be a vote of the whole House on the nominations. Then we can deal with any matters that members may wish to raise in the context of the original resolution.

The Hon. RICHARD JONES [5.24 p.m.]: On the substantive motion to establish a joint select committee, General Purpose Standing Committee No. 5 has already undertaken quite a substantial inquiry into bushfires. I think that report was unanimous, and it was very good. I cannot see any reason for yet another inquiry. I did not nominate myself for this inquiry because we did plenty of work on the previous inquiry. We interviewed many bushfire brigades personnel, volunteers and so on. I will not oppose the motion but I do not believe it is necessary.

The Hon. MALCOLM JONES [5.24 p.m.]: I wholeheartedly disagree with the Hon. Richard Jones. The resolution received from the Legislative Assembly is quite different from the terms of reference of the inquiry into the Rural Fire Service. Over the Christmas period there was a disaster in this State. It involved many agencies and the history of society's approach to bushfires. The inquiry into the Rural Fire Service was exactly that: an inquiry into the Rural Fire Service. The two overlap in very few areas. I ask that honourable members take that into consideration when voting for this motion.

The Hon. RICK COLLESS [5.25 p.m.]: I welcome the inquiry into the Christmas bushfires. It is important that the inquiry go ahead, given the seriousness of the issue and the changes that have occurred in bushfire management since the previous inquiry that the Hon. Richard Jones referred to. I am pleased that I have been nominated as a member of the committee. I feel I will do a good job because, as well as having fought many bushfires over the years, I have served as chairman of the Inverell Bushfire Management Committee and I was also the section 44 controller for the 1997 Bebo fire. I feel that the terms of reference are comprehensive: they cover all the issues that need to be looked at and that members of regional and rural communities are concerned about.

Hazard reduction is important to people in the bush. They are concerned about hazard reduction in national park areas and on other public land. We are also very concerned about the environmental impact of bushfires, particularly the impact of wildfires as opposed to hazard reduction burns. Many people have said to me they are not in favour of more hazard reduction because of the damage it can do to the environment. But in the Royal National Park in 1994 and in 2002 the huge wildfires wiped out much of the biodiversity.

The causes of bushfires are open to debate. This year many bushfires were lit by arsonists, which is of great concern. Other causes include lightning strikes. It has been reported that glass bottles can cause bushfires. We need to take all those issues into consideration. Since it was announced that I would be on the committee many people have contacted me. I have had reports of fuel loads, on public land in particular and on land generally, of up to 80 to 100 tonnes per hectare—up from around 8 to 10 tonnes per hectare when the country was grazed. Following the declaration of national parks and a lack of hazard reduction burns the fuel load can be four to five metres high on the floor of the forest. When it becomes dry and there are extreme weather conditions such as those last Christmas the result can only be a tremendous wildfire.

The Minister referred to the extreme climatic conditions as being the primary cause of the fires. While extreme weather conditions are needed for fires to explode as they did, without the fuel loads that were present the fires would not have been as severe as they were. It is important that the inquiry consider the management of fuel loads across all land tenures. I look forward to the debate continuing and in particular to resolving the membership of the committee. I think it is important that there are people on this inquiry who have an understanding of the impacts and management of bushfire fighting and who have experience in it.

The Hon. IAN COHEN [5.30 p.m.]: All members of this House were horrified at the violent outbreak of bushfires over the past summer. Although bushfires are a feature of the Australian environment, that particular outbreak was most sobering for everyone. The volunteer and regular fire units across the nation are to be congratulated on their efforts, and certainly the Greens join with the community in acknowledging the wonderful job they did. Firefighters sacrificed their time, and many left paid employment to help fight the fires and save many houses. No deaths were recorded during the recent fires, unlike during the 1994 fires, when firefighters lost their lives—as a direct result of which the Government provided $155 million for the installation of radio networks, to purchase modern diesel tankers and to renew equipment. That contribution towards revamping much of the equipment certainly had a significant and positive impact. I am advised that only half the number of homes lost in the 1994 fires were lost in the recent fires. It is terrifying to see even relatively small fires burning out of control and threatening property. Fires have a huge impact on human life.

I welcome the Hon. Tony Kelly and the Hon. Rick Colless as the Government and Opposition nominees, respectively, for the committee. Although I may disagree with both members on substantive issues about bush fire management, I am certain that they will deal openly and honestly with material that is put before the committee.

In the area in which I live there have been good, alternative conservation advances with regard to bush fire management, ranging from house design and fuel build-up management to encouraging the growth of a specific type of vegetation around houses. However, I am concerned about the one-dimensional suggestion that reducing fuel levels and creating barriers around buildings is the be-all and end-all. A few months ago the *Northern Star* carried an editorial stating that whilst it may be simple to clear wholesale areas to protect against bushfires, that type of reaction is not necessarily the best way to go. The editorial stated further that we need to deal with each episode separately and that we should be able to manage bushfires in a manner that is mindful of using the environment positively to alleviate the potential for increased damage.

When I hear about clearance of areas I am reminded of such activity during intense conditions last summer. In the hot dry winds, high temperatures and very low humidity fires were spotting from great distances. It was not a matter of saving an area around a particular building; much more was involved. I hope the committee will recommend some creative measures such as free-standing firefighting systems in bush areas and vegetated suburban areas and encouraging people to install water tanks to catch rainfall from their roofs. I would relish the opportunity to be a member on that committee so I could discuss such options and obtain evidence in a positive manner.

This is a very complex issue and involves dealing with emergencies while under pressure. I wish to relate a story involving a person whose name I will not divulge, as I do not have permission to do so. I am reliably informed that this person had a beautiful property in a bush area in the north-western outskirts of Sydney. That environmental gem had been looked after during that person's entire adulthood. However, when bush fire fighters came onto the property and, in a panic, commenced a forced back-burn, the flames got out of control and the entire property was destroyed. When I receive further information I will take the matter to the Minister's office. When people paced the distance the property was from the fire front, they discovered that the fire was at least five kilometres away. It is arguable that that back-burn was necessary. However, it got out of hand and it destroyed a person's life. I hope the committee will carefully consider all issues and come to some sensible resolution. I and others would feel terrible to learn that decisions to back-burn were not based on the best scientific understanding of each situation. I hope that future decisions are made coolly and less emotionally so that unnecessary damage is avoided.

Some years ago when a fire broke out on the property next to mine it was acknowledged that it was necessary for firefighters to bulldoze a track around the property. I have enough bush experience to have a balanced attitude to this debate. Any decision about how a fire should be dealt with is not a greenie versus redneck argument. It is extremely important to acknowledge also that during the recent bushfires a significant number of the fires were deliberately lit. Fires are part of our existence and there has been fire management for many years, but such vandalism is a crime against property and the environment. I hope that the committee will look into that.

I hope also that there is an acknowledgement that different types of bush burn with different intensity. Eucalypt forests are very different from rainforests. Eucalypt forests burn very readily and can create a conflagration in a relatively short time. Rainforests burn less readily but once they are destroyed, future growth is of a different type. I hope that the fire management program will acknowledge that burning can create more fires in certain circumstances.

Last summer there were many tragedies and there is real sadness about the level of devastation. Certainly it was a time of great bravery and effort by the community. It is appropriate that we continue to investigate bushfires so that we can learn valuable lessons from past mistakes as we learn from the exemplary behaviour of our firefighters and emergency organisations. Earlier the Minister mentioned the chain of command and the efficient and modern technology that combined to put up a courageous effort against the recent bushfires across the State. I await with great interest the result of this inquiry and hope that it reaches a balance that is in keeping with the aspirations of the community in a non-partisan manner.

The Hon. DON HARWIN [5.39 p.m.]: The Opposition is very much on record since the beginning of January supporting a parliamentary inquiry, so I welcome this resolution. Also, I applaud the fact that the honourable member for Bega in another place and the Hon. Rick Colless will represent the Opposition on the committee. Both are very well qualified and will contribute significantly to the deliberations of the committee. The Hon. Rick Colless is a volunteer firefighter in the Gum Flat Brigade and the honourable member for Bega serves with the Bibbenluke Brigade. The honourable member for Bega also represents the southern Shoalhaven area in the other place. As the Shoalhaven was probably the most adversely affected by fires, it is appropriate that someone from that region serves on the committee.

On Christmas night when we first heard of the impact of the fires on the Shoalhaven I was away from home in Sydney celebrating Christmas Day with my family. For three days I could not return to my home at Huskisson; the town was completely cut off, as was Vincentia and other areas around the bay and basin. For two days, until the road to the area was reopened, I could not confirm whether my house was still standing. It is a matter of record that five houses in Huskisson were destroyed, mainly in Callala Street. There was also considerable damage to the industrial estate around Huskisson and Woollamia. The devastation in the area was extraordinary.

Jervis Bay National Park actually abuts the back of houses and there is no buffer zone around Huskisson between the national park and the town, and this materially affects residents in Huskisson who are adjacent to the bush. The Shoalhaven suffers from more fire incidents than any other local government area in New South Wales. The area is extraordinarily well served by volunteer firefighters and fire control officer, Brian Parry. They do a tremendous job and we are grateful for their work. I conclude by calling on the committee to hold committee hearings in the Shoalhaven and to examine specific problems, particularly as they relate to buffer zones around townships. Those issues are well worth examining. I welcome the fact that this inquiry is about to get under way and wish the committee well in its deliberations.

Ms LEE RHIANNON [5.43 p.m.]: My colleague Ian Cohen has outlined our support for the inquiry. We congratulate the Government on its decision to hold the inquiry. I remind honourable members that the member Mr Peter Breen has moved an amendment that we believe is very important. Although the Government is to be congratulated on bringing forward the inquiry, it has attempted to dictate to the House who should serve on it. That is inappropriate and does not get the inquiry off to a good start. We are pleased that the member Mr Peter Breen has moved the amendment to allow the House to vote for the position of the crossbench member on the committee. We urge members to consider the amendment carefully and support it.

Reverend the Hon. FRED NILE [5.44 p.m.], by leave: The Christian Democratic Party is pleased to support the resolution from the Legislative Assembly that a joint select committee be appointed to consider and report upon the recent bushfires. The first term of reference relates to hazard reduction and other fire prevention measures. That is significant, particularly for those who have compared the incidence of bushfires in New South Wales and Western Australia. I hope the inquiry will ascertain why Western Australia has fewer major bushfires than New South Wales does. The relevant policies of the two States should be compared because apparently Western Australia has successfully managed its fires. We must determine how New South Wales has contributed to the massive bushfire damage in our national parks over the Christmas period.

I regularly drive backwards and forwards on the F1 between Sydney and Gerroa, and I did so as soon as possible after the road was reopened during the recent fires. I was amazed at the visible signs of intense heat caused by the bushfires. Trees were reduced to blackened ash and road signs were melted. It was evidence that

something unusual had fuelled the fires. Once again, I congratulate the volunteer firefighters, New South Wales Fire Brigades, the State Emergency Service and others who contributed to successfully controlling the fires. Remarkably there was no loss of life.

Debate is taking place about compensation for those who took part in the firefighting effort. Apparently, the Federal Government is restricting the application of the compensation and is seeking not to include the entire bushfire period. I hope that both State and Federal governments can resolve the matter. It is a little ironic that parades are being held to thank the firefighters, yet behind the scenes the Federal Government is trying to deprive firefighters from receiving just compensation for loss of wages and income. I do not think there has been a bushfire in New South Wales in which so many houses were surrounded by fire and destroyed. We feel for those who lost their homes, but we are thankful that so many homes were saved virtually at the last moment at great risk to firefighters. We are thankful also for the lives that were saved. The Christian Democratic Party is pleased to support the motion to establish the Joint Select Committee on Bushfires.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.47 p.m.], by leave: I express the gratitude of the Australian Democrats for the bravery and selfless action of New South Wales Fire Brigades, the Rural Fire Service, the State Emergency Service and the Police Service during the 22-day bushfire crisis from 24 December 2001 to 16 January 2002. Their actions should be commended. They certainly served the New South Wales community with great distinction. The aftermath of the 2001-02 bushfires resulted in the devastation of approximately 753,000 hectares of bush and grassland, and 331 homes and buildings. It is amazing that no human lives were lost amidst such massive destruction. The reason for this can be attributed to the back-burning operations undertaken by the New South Wales Rural Fire Service before and during the crisis and to improvements in the science, equipment, training and command structure of the fire service.

The Hon. Doug Moppett: The bad winds that were predicted didn't eventuate. That was a very big factor.

The Hon. John Jobling: Along with the temperature.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The weather obviously played a big part; the conditions helped the fires to start and keep burning. Three reports resulted from previous inquires about bushfires in New South Wales: the 1994 Legislative Assembly Select Committee on Bushfires, the coronial inquiry into New South Wales bushfires in 1996 and the report that followed the reference of that matter to the New South Wales Bush Fire Co-ordination Committee. The 1994 select committee had terms of reference similar to the inquiry that the House is now discussing. This parliamentary committee will again look into the causal factors of bushfires, their effect on biodiversity, hazard reduction and the adequacy of equipment and training available to fire brigades. So far only two of the 1994 committee's recommendations have been implemented: first, that the Rural Fire Service establish a minimum standard for maintaining fire trails; and, secondly, that Australian Standard 3959 be adopted into the New South Wales building code.

The 1996 coronial inquiry found problems with the dual control of bushfire management by local councils and the Rural Fire Service. It pointed to a structural weakness caused by the fact that fire control officers were employed by local government and had no direct reporting line to the Rural Fire Service commissioner. In 2000 Parliament passed the Rural Fires Amendment Bill and remedied the situation. Other recommendations have been implemented to varying degrees. The Bush Fire Co-ordinating Committee report of 1996 did not support the coronial inquiry recommendation to remove local government from the management and control of rural fires in New South Wales or the recommendation to amalgamate the Rural Fire Service and New South Wales Fire Brigades. My point is that, as with many committee recommendations, the regime of the day picks and chooses which ones it will implement. Recommendations have been made before in respect of managing bushfires in New South Wales but only some have been implemented.

The Auditor General's report of 1998 made 14 recommendations and revealed that aircraft have limited effectiveness in bushfire suppression. The use of the Sikorsky helicopter, or Elvis, during the recent bushfires raises a question about this finding. However, we must consider using both fixed and rotary wing aircraft and consider sourcing aircraft from other countries, such as Russia, which makes durable, low-maintenance helicopters. These are high-tech solutions to the problem, and, as in medicine, preventive measures are cheaper if they can be co-ordinated properly. Vegetation management and training of both the general population and firefighters rather than high-tech solutions are preferred in extreme situations. However, the committee's report will include greater detail on this issue. I believe crossbench members should be entitled to choose who will represent the crossbench on parliamentary committees rather than that choice being made for them. If that necessitates preferential voting, so be it.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [5.53 p.m.], in reply: I thank all honourable members for their contribution to the debate. Many issues have been raised and there is obviously general support for the establishment of the Joint Select Committee on Bushfires. The Government will support the amendment moved by the Hon. Peter Breen. I commend the amended motion to the House.

Amendment agreed to.

Motion as amended agreed to.

The PRESIDENT: Order! According to the procedure for the conduct of ballots under standing order 236, I order the bells to be rung for five minutes. I would like to explain to honourable members the procedures to be followed under Standing Order 236 for the conduct of the ballot. There is no procedure under the standing order for the nomination of candidates. Under the standing order each member is required to give to the Clerk the name of the crossbench member he or she intends should serve on the committee. For this purpose ballot papers have been printed and will be distributed to members. After voting, members should deposit their ballot paper in the ballot box near the Clerk, who will record the presentation of the ballot paper against a list of members of the House. The member reported by the Clerk to have the greatest number of votes will be declared by me to be the member of the committee. If two or more members have an equality of votes, the standing order provides for the President to decide who will serve on the committee. The Clerks will now distribute ballot papers.

[*The ballot proceeded.*]

The Clerk advised the Chair of the result of the ballot.

The PRESIDENT: I declare the Hon. John Tingle to be elected as the crossbench member on the Joint Select Committee on Bushfires.

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

JOINT SELECT COMMITTEE ON THE QUALITY OF BUILDINGS

Appointment

Consideration of the Legislative Assembly's message of 13 March.

The Hon. IAN MACDONALD (Parliamentary Secretary) [6.07 p.m.]: I move:

1. That this House agrees to the resolution in the Legislative Assembly's message of 13 March 2002, relating to the appointment of a Joint Select Committee on the Quality of Buildings with the following amendment, in which amendment the concurrence of the Legislative Assembly is requested:

   Paragraph 3. Omit paragraph, insert instead:

   (3) (a) That the Committee have leave to sit during the adjournment of either or both Houses, to adjourn from place to place, to make visits of inspection within the State and have the power to take evidence and to send for persons, papers, records and things, and to report from time to time.

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

   (c) A report presented to the Clerks is:

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

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

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

   (iv) to be recorded in the official proceedings of the House.

2. That the Legislative Council members of the Committee be Ms Fazio, Mr Ryan and Mrs Sham Ho.

In 1998 the Government introduced three significant changes to the Environmental Planning and Assessment Act. Firstly, in regard to consent and complying developments, to try to make sure that smaller issues that

otherwise would have taken up valuable council time could be expeditiously dealt with and councils could focus on more complex issues. Secondly, to develop the concept of integrated development to ensure that all players were involved early on in the assessment of the development of the application, so that later items did not obstruct appropriate developments; and thirdly, to introduce competition into the process provided by building certifiers by bringing in private certifiers.

The third change was designed to break the hold councils had over the inspection of buildings. It was considered that competition could lead to improvements in the certification process. Since the introduction of the changes the Government has monitored their progress. Both the councils and the community had considerable input into the 1998 changes. The Government intends to continue to examine these changes to determine how we can make the system work better. Obviously, private certification required certification bodies to accredit certifiers. I am advised that, so far, 290 have been accredited as certifiers. The major body undertaking certification is the Building Surveyors and Allied Professionals Accreditation Board.

The Government is becoming increasingly concerned that councils and consumers feel that the process is not delivering the quality we expect. The Government is also very concerned about recent reports that allegedly identified serious flaws in the construction of new buildings. My colleague the Minister for Urban Affairs and Planning is currently assessing the certification system for private certifiers. My colleague is concerned that the Building Surveyors and Allied Professionals Accreditation Board has not been doing its job. The Minister has written to the board asking it to show cause why he should not remove its role as an accrediting body of private certifiers. If the board cannot respond satisfactorily, it may lose its power to provide accreditation of private certifiers.

The inquiry will also consider the checks and balances in the system, whether it be the private certification system or the system dealing with the qualifications, experience and conduct of the people licensed to build new buildings, the checks and balances in the builders licensing scheme, and the role of consumers, traders and the tribunal in dispute resolution. The Government believes this joint select committee is the best mechanism to examine these issues. Clearly, the system is not working well enough. This inquiry will provide a great opportunity to deliver improvements for the system and consumers by making sensible, practical recommendations to improve the quality of buildings in our State. I commend the motion.

The Hon. JOHN RYAN [6.11 p.m.]: The Opposition welcomes the motion, at least to the extent that a joint select committee will investigate matters that I have placed before the House again and again, and other matters, such as the protection of consumers and regulation of the building industry, on which the Government legislated in the last session. The concern remains that far too many consumers have been the subject of shonky builders. It is amazing that their road to justice—whether it is through the new Consumer Trading Tribunal the new mediation process or an insurance claim—is protracted and expensive. Recently, I received letters from two constituents that indicate the necessity of this motion.

One aspect of the building industry that the committee has been charged to investigate is private certifiers. When people who build a house have a question about whether the house conforms to Australian building code standards, the builder is able to have his construction certified. Unfortunately, there have been plenty of reasons to question whether certifiers are complying with the law. They are providing certificates for buildings that do not comply with the law. Last year I was contacted by a constituent in the Camden area whose house was being constructed by a well-known building firm. I have forgotten the name of the builder, and I will not even attempt to guess it. The house was constructed on a sloping building site. The builder gave my constituent certificates stating that the building complied with all the necessary requirements of the Australian building code, and that it was structurally sound.

The building is falling down the slope and does not comply with the requirements of the Australian building code; nor, clearly, does it meet the requirement of being structurally sound. The building is now the subject of an inquiry by the Department of Fair Trading. During the course of the dispute between my constituent and the builder, the piers that underpin the house were dug up. During that time a more detailed inspection of the piering by a structural engineer revealed that the piers did not accord with the instructions by the engineer for the construction of the house. The builder had taken a number of shortcuts and failed to build the house to appropriate requirements. My constituent was able to show me engineering certificates that said the house complies when, clearly, it does not.

My understanding is that Campbelltown City Council wrote to the Minister for Urban Affairs and Planning questioning the veracity of private certifiers for buildings that council inspectors have found do not

comply with the Australian building code. I note that at least one local council, and perhaps others, has questioned the quality of engineering certificates provided for private residential buildings. Today I was given correspondence from a Cherylyn Zeene and Eileen Dean complaining about a builder in the Marrickville area. They believe that Marrickville Council has issued a final occupation for that building based on certificates given to them by a private engineer. At the request of my constituent the house was reinspected by an engineer named Alfred Frasca and another engineer. Both engineers found that the house does not comply with the requirement to be structurally sound.

There is ample justification to question whether certificates given to consumers and councils certify that a house has been constructed according to the Australian building code, and whether the house has been constructed soundly. The construction of a house is one of the most expensive investment decisions any individual, or group of individuals, might make. They ought to be able to be assured that the house, given that ordinary individuals are not able to tell this by sight, has been soundly built. Therefore it is appropriate that the committee of this Parliament examine the matter. However, there are other issues of concern in the building industry that I will refer to in a moment. A series of articles published in the *Sydney Morning Herald* revealed that a number of houses that were part of strata title or high-rise developments were found not to be structurally sound or adequately built.

Under the Home Building Act and other legislation in New South Wales consumers can make a complaint to the Department of Fair Trading and raise questions about whether the builder is appropriately licensed, go to the Fair Trading Tribunal and initiate dispute resolution, or make an insurance claim against the home owner warranty insurance scheme. Even though the consumer has three options to choose from to try to solve the problem, none of them is working. I am pleased that, in another place, the substantive motion was amended to ensure that people making submissions to the committee could raise questions about the operation of the home-owner warranty insurance scheme. I have plenty of evidence I could give to this House that indicates that the insurance industry is stalling those claims. It is taking much longer to deal with such claims than it would take to build a house. I was concerned by the recent announcement of the Government that the arrangements for home-owner warranty insurance in New South Wales will be attuned to schemes operating in other States.

What bothers me is not that there will be a uniform scheme across Australia, but that that uniform scheme will be the least common denominator for consumer protection available in each State. It has been suggested, for example, that someone could take out an insurance policy but would only be able to make a claim against that policy as a last resort. That means that before a consumer could make a claim against the insurance policy, he or she would have to take the builder to the Fair Trading Tribunal, which would refuse to investigate. The consumer would then have to take the builder to the council and have it certify the building and refuse to investigate the claim. Following that, the consumer would have to take the builder to the Department of Fair Trading and go through what is often expensive and lengthy litigation. When all else fails, the consumer would finally be able to make a claim against the insurance policy, for which a large premium had been paid.

Consumers are particularly concerned that that might occur and they will be keen to make submissions to the committee. I am pleased that the Government has accepted amendments from the Opposition in another place that will enable those matters to be properly and thoroughly canvassed. I believe the motion before the House is timely. I understand there are to be amendments for the House to consider, and the Opposition will take care in considering those amendments. I am pleased that, at long last, we will have an inquiry into the home building industry that will be able to canvass all of the issues for all sorts of buildings. I am equally pleased that the Government will chair the committee—that will not be a bad thing—but I sincerely hope it ensures that everyone gets a fair go in having their matters heard. I hope the Government does not judge this issue in a self-serving manner. To date it has tended to deal with this matter by keeping information from the public instead of being open about inquiries that it conducts. I commend the motion.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.21 p.m.]: I congratulate the Government on the motion, but it is belated, after all the door knocking to address the problem. If the Government had not established this committee, the crossbench and the Opposition undoubtedly would have established it. The terms of reference are broad enough to cover the issues. Irene Onorati from the Building Action Review Group was concerned that the subject be aired widely, but publicity in the media had suggested that the inquiry would deal only with high-rise buildings, because of the lack of certification of some city high-rise buildings and concerns expressed by the Lord Mayor of Sydney, Frank Sartor. The problem of uncertified high-rise buildings has emerged particularly since the introduction of self-certification, a Government and Opposition initiative that adhered slavishly to a market philosophy that will not solve all of society's problems.

The concept of competitive markets can be found in the first chapter of any economics book, and most of the later chapters explain why that concept is incomplete. Many people fail to read beyond the first chapter of the economics books, but beneficial competition requires a strong legislative framework. Inexperienced builders should not be allowed to pick off consumers, most of whom build one house during their lifetime. Consumers come to grief at the hands of builders who rip them off and, Phoenix-like, turn in to another company as things get hot. This is a huge problem. Some builders are either inherently shonky or incompetent, and experts may not be available to advise or provide evidence for people who have been taken down through shoddy work by builders. Many of the experts get most of their work from the building industry and are reluctant to submit damning reports about building work.

This problem has caused much angst. The building certification process should fund impartial inspectors to provide opinions on building quality and neutral reports to back up claims by consumers who have been dudded. A cheap court system is also necessary. Excessive court costs are a problem in Australia and in all common law jurisdictions. The courts are prohibitively expensive and complicated. The records of builders should be opened to scrutiny so that consumers may know whether a builder has been the subject of complaints, and whether a court has ruled on those complaints. A person complaining about a builder should not have to establish everything de novo. The builder's records should be open to inspection. Let the chips fall where they may. Frivolous complaints against a builder that are dismissed would also be recorded.

Access to records would enable consumers to know see what a builder had done in the past. Indeed, a record of contracts would allow consumers to check on a particular builder by speaking to previous clients of that builder. That would not infringe civil liberties but would enhance market operation in an open society. Those details need to be worked out by the committee. A builder who does a poor job should not necessarily undertake the restitution work. A consumer who does not trust a builder undoubtedly would prefer someone else to fix the work. The builder may be incompetent or unethical, or both, and restitution should be undertaken by another builder.

Insurance must be considered, but with a good regulatory process, an appropriate restitution system and a way of weeding out bad builders, legal costs and insurance premiums will decrease. We should not look at the money, then at the court process, and then at the certification of builders and inspection of buildings, almost as an afterthought. The key is a credible and neutral inspection and certification process, which will make the legal and financial problems far easier to solve. I ask that the committee take that into account in its deliberations to solve problems that we have heard far too much about in this House. I ask the Government to allow the crossbench members to choose their own representative on this committee, rather than attempt to influence them. That would reflect the democratic processes of this House.

Reverend the Hon. FRED NILE [6.28 p.m.]: I support the motion for the formation of a Joint Select Committee on the Quality of Buildings in New South Wales. No doubt all members of this House have had contact with many of the anguished consumers in this State who have been ripped off by shoddy building work. In some instances the building is falling down, or the foundations or walls are cracked. Sometimes repairs are shoddy and the builder does not want to know anything about it. Regardless of whether one calls them shoddy builders or criminal builders, I hope that the inquiry will establish who they are.

The committee will inquire into the quality of buildings in New South Wales to determine whether there are enough existing checks and balances to ensure that consumers are guaranteed that their new homes are safe, properly certified and built to satisfactory standards. The second part of the terms of reference relates to certain provisions of the Environmental Planning and Assessment Act that have been in operation since July 1998. There must be some opportunity for those aggrieved consumers to give evidence before this committee. Organisations will give evidence to the committee, but representative and private individuals should also be encouraged to give evidence. The inquiry must not be restricted to associations and organisations. I am sure the Hon. John Ryan will ensure that consumers get their so-called day in court, or at least their day before the committee.

I support the amendment moved by the Government. The resolution requires that the committee report to the Clerk of the Legislative Assembly. A joint committee should report to both Houses. Following the Government's amendment, paragraph (3) (b) will guarantee that reports, minutes of proceedings and evidence taken before the committee will be sent to the Clerk of each House. As amended, paragraph (3) (c) will refer to reports being presented to the Clerks, plural. It is important that the upper House receive equal status in joint committees. It may not always have happened but we will ensure that it happens in the future. We are very pleased to support the resolution. Many notices of motion and other procedures have referred to this problem. We are pleased that we have now reached this point, the beginning of the inquiry, which should at least give some satisfaction to consumers. A lot more will have to be done during the inquiry.

The Hon. RICHARD JONES [6.32 p.m.]: I support the motion. Irene Onorati from the Building Action Review Group [BARG] briefed the crossbench today. She had files on various shonky builders and the houses they had partially or badly built. At the briefing she said she was hardly able to cope with the number of complaints coming to her from people from all over New South Wales, but particularly Sydney. I hope she will be delighted that she can now finally come before the committee and give evidence. I imagine it will take quite some while for the committee to examine all her files. It will be quite a job.

It is a pity it has taken this long to get this thing right. The Hon. John Ryan has been raising this issue in this Chamber for a very long time, referring to case after case and naming builder after builder. Amazingly, some of these people are still in business. I am very pleased that the committee will be a joint committee and I am sure it will do a very good job. There will be some interesting evidence in the files of BARG. I move:

That the question be amended by:

1. Omitting the words "Mrs Sham Ho" from paragraph 2, and inserting instead "one crossbench member chosen by ballot in accordance with Standing Order 236."

2. That paragraph 2 be amended to reflect the result of the ballot.

The Hon. HELEN SHAM-HO [6.33 p.m.]: I also congratulate the Government on setting up the Joint Select Committee on the Quality of Buildings. I welcome the opportunity to speak to the motion, which deals with some of the key areas of the home building industry: the quality of buildings, consumer protection, the process of certification and builder licensing. This issue is obviously of tremendous importance to people in New South Wales, where an estimated 9,000 home-owners are said to be victims of the home building industry.

As the Hon. John Ryan has said, the motion is timely with the royal commission into the collapse of HIH headed by royal commissioner Justice Neville Owen having commenced last year. As honourable members will remember, the collapse of HIH in May 2001 was the biggest corporate collapse in Australia's history. It created enormous uncertainty, distress and hardship for tens of thousands of individuals, families and businesses.

But even before the collapse of HIH, it had become apparent to many people, including me, that the home building industry was failing to protect home owners in New South Wales. Over the past two years I have been inundated with correspondence from victims of the home building industry, many of whom I had the opportunity to speak with personally at the conclusion of the budget estimates committee on Fair Trading both this year and last. The Hon. Richard Jones and Reverend the Hon. Fred Nile referred to the backbench briefing by Irene Onorati, President of the Building Action Review Group, or BARG. Last September at another crossbench briefing I met with her and a number of victims of the home warranty insurance scheme. I spoke to them for almost two hours, staying on after the conclusion of the briefing to listen to their stories and concerns and answer their questions.

The complaints raised with me covered unscrupulous or bankrupt builders, builders refusing to rectify defective work, delays in having matters heard in the Fair Trading Tribunal, and problems in having insurance claims finalised or paid. A consistent complaint was the culture of the Department of Fair Trading and its inability to enforce the Home Building Act. A related concerned alleged by these people was potentially corrupt or improper conduct by particular members of the Department of Fair Trading. Many others spoke of the lack of responsiveness of the director-general of the department.

On the whole, the general consensus was that many aspects of the home building laws are inefficient and non-effective. The letters I have received from constituents on this matter are extremely distressing. They tell stories of legal pressure, financial hardship, emotional turmoil, depression, and family breakdown. They speak of dream homes turned into building nightmares, and of lives shattered by corrupt builders and insurers who refuse to pay claims. Many of these families have been waiting years for a resolution from courts and tribunals, all the while having to bear the high cost of defective or derelict homes.

Nearly three years ago now the Chens paid over $25,000 to a builder to construct their Wentworthville home. The builder took off before the job was finished, leaving the house incomplete and structurally unsound. The Chens were not able to claim insurance because the builder was not covered by the home insurance scheme. Two years ago Paul Vogel contracted a builder to remove his garage roof and build on a second storey to his Eastlakes house. The builder walked off the job and the garage collapsed into his neighbour's garden. The Department of Fair Trading rejected his claim. I am very sad to report that Mr Vogel was ordered by the local council to demolish his home in January this year. Allan and Janine Dyason paid a builder $69,000 to perform work on their Waverley home. Two years later their claim still has not been finalised.

Five years ago Denise Perry's 87-year-old mother spent $400,000 on a home in Blakehurst only to find out later that it had major structural defects. The cases go on and on. Although an independent structural engineer recommended that the house be completely demolished, Mrs Perry's mother was denied home building insurance on the basis that her claim was out of time. I hasten to add that many of these cases have been settled recently, largely due to the intervention of the previous Minister for Fair Trading, the Hon. John Watkins. I commend the Minister for the very efficient manner in which he has dealt with these complaints. I conclude by saying that I hope the Joint Select Committee on the Quality of Buildings will rectify some of the concerns and complaints of people who are suffering because of the present defective laws.

The Hon. IAN COHEN [6.40 p.m.]: This matter has been covered to a great extent and I will not repeat much of what other honourable members have said. I congratulate Irene Onorati who, in her role as President of the Building Action Review Group [BARG], has been relentless and consistent. She has done a fantastic job for many disempowered people. The Greens support the establishment of the Joint Select Committee on the Quality of Buildings and are keen that this inquiry be undertaken. In my time in this House I have said much about planning issues and the reasons why shonky practices have developed that broke people's lives because of poor quality workmanship by less-than-scrupulous and less-than-honest builders.

That process was aided and abetted, relatively if not consciously, by the system that farms out the review of building work to private certifiers instead of to local councils. This goes back to the original integrated development assessment legislation that went through this House when I first arrived—and I remember that we debated it throughout the night. The work of people such as Irene Onorati leads to the telling of many manifest stories, particularly plumbing stories that would curl the hair on anyone's head. People have moved into their family dream home and had to live with constantly overflowing toilets. We heard many disgusting horror stories, which we could call "Faulty Towers—A Case Study on Planning" under the Hon. Craig Knowles who expects to be the future Premier.

The Hon. Duncan Gay: Not unless he is Premier before the next election.

The Hon. IAN COHEN: The Opposition knew what was going on at that time. It was very quiet and acquiesced to the direction that much of that legislation took. The Opposition knew that the Government would find itself in trouble, which it has. It is good that the Deputy Premier, the Hon. Andrew Refshauge, has proposed the establishment of this committee. I hope that the parameters include building certifiers, private certification and the licensing process for builders, and that the committee gets to the bottom of this. People of non-English speaking background are vulnerable. They have gone to builders and been seriously done over.

I am pleased that the Hon. John Ryan is a member of the committee. Over a long time he has done a significant amount of work on this problem, and I have often referred to his wealth of knowledge on building matters. The material he has collected contributed to appropriate pressure being placed on the Government to establish this inquiry. The former Minister for Fair Trading, John Watkins, deserves credit for his work in settling complaints. Many families have had their lives destroyed by crumbling buildings, and their frustration has led to illness.

In my limited exposure I have heard many heart-rending stories about the conditions that people have to live in even today because they had been badly treated and because the remediation work was either non-existent or of very poor quality. They have gone through many problems in acquiring adequate living conditions.

People have been extremely unfairly treated. A significant number of people have approached me and other members of this House and said they had to demolish their house and start all over again. When that is compounded with the problems of insurance, an argument could be laid for the re-establishment of the Government Insurance Office so that people can get proper compensation. I am keen that this inquiry be undertaken and that there be an open, transparent process of offering people some degree of representation. Many people have been really badly done over by both the Government and private industry on this matter. I commend the motion.

The Hon. JENNIFER GARDINER [6.44 p.m.]: After my election as a member of this place the first file I saw was on the subject of the quality of buildings in New South Wales. It was handed to me by the Hon. Sir Adrian Solomons, who was in extensive correspondence with the aforementioned Mrs Irene Onorati of BARG. It is good news that this long-running problem is to be addressed by a joint select committee. It is noteworthy that this is another case of the Carr Labor Government playing catch-up politics. After all, it was the

Opposition that proposed the establishment of a parliamentary inquiry into the quality of buildings, to be conducted by General Purpose Standing Committee No. 4. As chairman of that committee, I acknowledge the support for such an inquiry by the Deputy Chairman of General Purpose Standing Committee No. 4, the Hon. Ian Cohen.

The Opposition and crossbench members had the numbers to hold a parliamentary inquiry, but it only became a reality when the Deputy Premier, and Minister for Planning decided to try to recapture some of the political ground on this very important issue. The Government had a change of heart and decided to support the establishment of this joint select committee. I look forward to the work of that committee and I commend its inquiry into this very long-running problem. Hopefully there will be some relief to many people who have been adversely affected over a long time.

Ms LEE RHIANNON [6.47 p.m.]: I join with my colleague Mr Ian Cohen in welcoming this inquiry. We congratulate the Government on seeing its way free to establish this committee, and we acknowledge that considerable work has been done by members of other parties to highlight this issue. I join with other members in thanking Irene Onorati and all the other members of BARG for their consistent work over the years. We met with some of them today and their stories were just as graphic as they were when we met them some years ago.

We were very heartened to read in the terms of reference that the Government has opened up certification. Paragraph (1) (a), (b) and (c) of the terms of reference cover certification and available disciplinary procedures. The Greens believe that those issues go to the heart of the problem of why we need this inquiry. Private certification has destroyed many people's lives. Originally this work was done by councils but, thanks to the wisdom of certain people in this place, private certifiers were accredited to work in this industry. That means that a builder or developer can choose a certifier. We know that certifiers would go bust if they were tough; therefore, it is in the builders' and developers' interests for private certifiers to be quite compliant and co-operative.

This is similar to the problem with environmental impact statements. Many times the Greens have raised problems with consultants and how they can be co-operative with people who want certain outcomes. The building industry has the same problems. Private certifiers know that if they deliver a certain decision, they will get more work. Essentially that is why we have heard these horror stories about people's dream homes slipping down a hill, about the front end of a house falling off, about electrical work that is highly dangerous, about bathrooms that do not work, and about not being able to access running water.

This has happened because the private certification system does not work. The seeds of destruction of this process were sown from day one. The introduction of private certification led to the problems that so many citizens of New South Wales grapple with every day. We must examine the inappropriate use of competition in such an important area as home building. The role of councils should also be examined. The Greens believe that local councils should be reintroduced into the centre of the process, where they can act as honest brokers, free from commercial pressure. I congratulate BARG and the other interested community groups around New South Wales on their work in this matter. Development and individual housing construction comprise the bulk of complaints received by the Greens and other honourable members.

The Greens are pleased with the terms of reference, but we feel they should have gone a little further. It is necessary for there to be stronger terms of reference that include the examination of a whole range of conditions of consent, including construction compliance. However, the establishment of the inquiry is a good start and we are pleased to support it. We believe that the introduction of private certification was part of a longer set of changes to make life easier for developers at the expense of residents and the community. The inquiry will bring some balance to development in this State and it will ensure more equitable and affordable housing for all people in New South Wales.

The Hon. IAN MACDONALD (Parliamentary Secretary) [6.51 p.m.], in reply: I thank all honourable members for their contributions to the debate. Much has been made of problems relating to the quality of buildings. It is not a new problem but it is one that we are in a position to address. The inquiry will allow an unbiased and rational review of the process used to certify buildings, as well as processes used to register or license people involved in the construction of buildings, be they council officers, private certifiers or tradespeople. Most important, the inquiry will give the Parliament much-needed advice on whether there are checks and balances to provide safe, properly certified and, most important, quality buildings.

At the end of the day we should be concerned about the quality of the buildings in which people are to live. Let us not forget that a house is probably the biggest investment a person will make. The Government is

committed to ensuring that that investment is a safe one and that it provides both personal and financial security. The Government will support the amendment moved by the Hon. Richard Jones.

Amendment agreed to.

Motion as amended agreed to.

The PRESIDENT: Order! According to the procedure for the conduct of a ballot under Standing Order 236, I order the bells to be rung for five minutes for the conduct of the ballot. I would like to explain to honourable members the procedures to be followed under Standing Order 236 for the conduct of the ballot. There is no procedure under the standing order for the nomination of candidates. Under the standing order each member is required to give to the Clerk the name of the crossbench member he or she intends should serve on the committee. For this purpose ballot papers have been printed and will be distributed to members. After voting, members should deposit their ballot paper in the ballot box near the Clerk, who will record the presentation of the ballot papers against a list of members of the House.

The member reported by the Clerk to have the greatest number of votes will be declared by me to be the member of the committee. If two or more members have an equality of votes, the standing order provides for the President to decide who will serve on the committee. The Clerks will now distribute ballot papers.

[*The ballot proceeded.*]

The Clerk advised the Chair of the result of the ballot.

The PRESIDENT: Order! There being an equality of votes, I cast my vote for the Hon. Helen Sham-Ho. I therefore declare the Hon. Helen Sham-Ho as the crossbench member on the Joint Select Committee on the Quality of Buildings.

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

[*The President left the chair at 7.06 p.m. The House resumed at 8.45 p.m.*]

JOINT STANDING COMMITTEE UPON ROAD SAFETY

Membership

The DEPUTY-PRESIDENT (Reverend the Hon. Fred Nile): I report the receipt of the following message from the Legislative Assembly:

MADAM PRESIDENT—

The Legislative Assembly informs the Legislative Council that it has this day agreed to the following resolution—

That Thomas George be appointed to serve on the Joint Standing Committee upon Road Safety in place of Andrew John Stoner, discharged.

Legislative Assembly
19 March 2002

JOHN MURRAY
Speaker

ANTI-DISCRIMINATION AMENDMENT (DRUG ADDICTION) BILL

Second Reading

The Hon. JOHN HATZISTERGOS [8.51 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 November last year, the Premier informed the House that the Government would review New South Wales disability discrimination laws to prevent them from being used in an unintended manner.

The Premier's comments were prompted by the Federal Court's decision in *Marsden v Human Rights and Equal Opportunity Commission and Coffs Harbour and District Ex-Servicemen and Women's MemorialClub.*

The Federal Court's decision suggested that drug addiction could be treated as a "disability" under the Commonwealth Disability Discrimination Act.

The relevant provisions in the New South Wales Anti-Discrimination Act are in the same terms as the Commonwealth legislation. As such, there is a risk that the same interpretation could be given to the law in New South Wales.

The Premier's comments indicated support for the concerns expressed to the Government by employers about this issue.

The Government does not believe that drug addiction should be treated as a disability under the Anti-Discrimination Act. These amendments should not be taken to suggest that drug addiction does constitute a disability.

The Government believes that a sensible interpretation of the current provisions would not lead a court to decide that drug addiction is a disability. However, the Government recognises that employers desire more certainty than this.

The disability provisions in the Anti-Discrimination Act apply to a number of fields, including education, accommodation and club membership. This bill focuses on employment rather than these other fields, because it is in the employment area that this issue is likely to cause most concern.

These amendments in the employment area should not be interpreted to suggest that the Government intends that drug addiction be treated as a disability in the other fields covered by the Anti-Discrimination Act.

In broad terms, the bill provides an exception to the disability discrimination provisions relating to employment such that it will not be unlawful to discriminate against a person on the ground of disability in employment where the disability relates to dependence on a prohibited drug.

The exception will apply to the provisions in the Anti-Discrimination Act that are concerned with direct employment relationships. That is, the exception will apply to the prohibitions in relation to employees, commission agents, contract workers, partnerships and employment agencies.

The exception will not apply to the prohibitions in relation to local councillors, industrial organisations or qualifying bodies. The exception in the bill will apply to discrimination on the ground of disability if the disability relates to a person's addiction to a prohibited drug.

A prohibited drug is defined to mean a prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985. Methadone and buprenorphine are excluded from the definition of prohibited drug in the bill. They are important forms of treatment for heroin addicts.

The bill includes a power to exclude other drugs by regulation. "Disability" is given an extended meaning under the Anti-Discrimination Act. It includes a past or future disability and a belief that a person has a disability (whether or not the person in fact has the disability). The bill does not adopt this extended meaning.

The exception in the bill will apply only where the person is actually addicted to a prohibited drug at the time of the discrimination. This will ensure that employers cannot discriminate against persons who have overcome their addictions or against persons who are not in fact addicts.

The bill will supplement the existing provisions in the Act which provide protection for the legitimate needs of employers. The Government is committed to working with the whole community to find solutions to the serious and complex issue of drugs in our society.

The New South Wales Drug Summit in May 1999 and the Drug Summit Plan of Action in July 1999 demonstrate the Government's commitment in this area. My colleague, the Special Minister of State, released the Report of Progress on the Drug Summit Plan of Action earlier this year.

The Government encourages people with drug problems to seek treatment. The expanded treatment options the Government has introduced are outlined in the Report of Progress on the Drug Summit Plan of Action.

This bill is not about penalising people with drug problems. Rather, it is directed to ensuring that our disability discrimination laws are not used in an unintended manner.

I commend the bill to the House.

The Hon. JAMES SAMIOS [8.51 p.m.]: The purpose of this bill is to allow employers to be exempt from antidiscrimination laws in relation to persons with a disability in employment where the disability relates to dependence on a prohibited drug. The recent Federal Court decision suggesting that drug addiction could be treated as a disability under the Commonwealth Disability Discrimination Act has paved the way for a similar interpretation to apply to the New South Wales Anti-Discrimination Act. This bill will create an exemption to disability discrimination provisions relating to employment where the disability relates to a prohibited drug dependency. Prohibited drugs are defined as those under the Drug Misuse and Trafficking Act 1985 except methadone and buprenorphine, which are used to treat heroin addiction. The bill includes a power to exclude other drugs by regulation.

The bill ensures that drug addiction will not be treated as a disability under antidiscrimination legislation in employer-employee relationships. However, the bill has the power to remove other drugs from this

provision by regulation. The Opposition does not oppose the legislation but notes that the Hon. Ian Cohen proposes to move two amendments. The Opposition will consider removing the power of the Attorney General to exclude other drugs by further regulation and also determine whether prohibited drugs should remain as those defined by the Drug Misuse and Trafficking Act 1985.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.53 p.m.]: The Anti-Discrimination Amendment (Drug Addiction) Bill responds to the Federal Court's decision in *Marsden v Human Rights and Equal Opportunity Commission and Coffs Harbour and District Ex-Servicemen and Women's Memorial Club* in which the applicant claimed that Coffs Harbour RSL discriminated against him when he was refused service of alcohol, removed from the premises and deprived of his club membership on the basis of his opioid dependence. The Federal Court could not uphold the tentative view of the Human Rights and Equal Opportunity Commission [HREOC] that drug dependency could not constitute a disability within the meaning of the Commonwealth Disability Discrimination Act. Justice Branson ordered that HREOC's decision be set aside and given further consideration. The matter was later settled.

The Minister in the other place said in his second reading speech that the court's decision suggested that drug addiction could be treated as a disability under the Commonwealth Disability Discrimination Act and that relevant provisions in the New South Wales Anti-Discrimination Act are the same as provisions in the Commonwealth Act and, therefore, there is a risk that the same interpretation could be applied to the New South Wales Anti-Discrimination Act. The bill will provide an exception to disability discrimination in employment under the provision of certain sections of part 4, division 2, of the principal Act if a person is dependent on prohibited drugs. The only exception will be for local government councillors, industrial organisations and qualifying bodies. This goes against the advice of the report of the New South Wales Anti-Discrimination Board entitled "Enquiry into hepatitis C related discrimination, November 2001," which states:

> There is a perception of people with Hep C as somehow deviant and automatically engaged in illegal criminal behaviour lies at the root of internalised justifications for treating people in a discriminatory fashion.

As a matter of policy, the view of the Anti-Discrimination Board is that discrimination on the basis of people's drug dependency, either past or assumed, and their drug dependency treatment may amount to disability discrimination. In a letter dated 6 December 2001 the Australian Lawyers for Human Rights stated:

> The Anti-Discrimination Act already facilitates an employer to deny employment to a person whose addiction would prevent them from performing a job effectively or safely.

Like the Anti-Discrimination Board, the Australian Lawyers for Human Rights acknowledge that to remove the right from a particular section of the community will only exacerbate community division and give legitimacy to prejudice based on difference. The New South Wales Combined Group of Community Legal Centres is concerned about unintended and problematic consequences of the bill. It states:

> It is our view that the Bill may have broader and unintended consequences, since it appears to be ill considered and hastily written.
>
> The term addiction has no diagnostic criteria nor is it used in medical, social or academic literature. The term "addiction" is in itself morally pejorative.
>
> It is not clear in the Bill who has the authority to determine someone's "addiction". If it is the employer then they will be invested with a high degree of discretion in judging something that even experts cannot agree on.
>
> It is a matter of considerable legal and medical debate whether a disability is in fact related to dependence. This carries major privacy implications, as well as evidentiary ones, relating to questions of how a current dependency is proved, for the purposes of s.49PA (2) (b) of the Bill.
>
> Under the amendments it is not clear whether the burden of proof for demonstrating that a person's disability is not related to drug dependence, or that an employee is not drug dependent rests with the individual being discriminated against.
>
> As stated above the Bill also attaches moral claimed causes of disability. For example, a person may be differentially discriminated against on the ground of having a liver disease.
>
> If a person has the disease as a result of excessive alcohol consumption they will have recourse to ADA legislation. On the other hand if the liver disease "relates to" their (past or present) dependence the proposed amendments will exclude them from seeking a legal remedy for discrimination. A disease may be viewed as being related to their dependence where Hepatitis C transmission was a consequence of illicit drug use.
>
> Similarly the amendments will describe moral blame to other causal factors. If a person has a physical disability as a result of an injury incurred in a marijuana related accident then they may not have recourse to the ADA legislation if the Bill is passed. Whereas an armed robber who receives a physical disability during a robbery may have recourse to the protection of the ADA.

These are the consequences of anomalies in the bill. In a letter to the Attorney General dated 11 December 2001 the Legal Working Party of the Australian National Council on AIDS, Hepatitis C and Related Diseases said that the Act, as it currently stands:

> … adequately addresses concerns regarding drug-addicted employees who are unable to perform the inherent requirements of their job.

That organisation opposes the bill. Privacy issues will arise. How do we find out whether someone is on drugs? Do we take urine samples? The Australian Democrats see little evidence provided by this Government to justify the bill, which would legislate discrimination against a section of our society that needs help, not a kick in the guts. I have some practical experience in a number of facets of this type of legislation. During my time at the water board, which was interesting, a number of people who were accused of being drug addicts were sent to me to sort out. I recall seeing one person who was alleged to be a drug addict and about whom I knew nothing until he walked through the door. I did not know what I was supposed to do with him. If he was a drug addict, I presume he could have been sacked, although even that was not clear.

This person resented being sent to the medical officer. He leered at me and said, "You can't prove anything, can you?" It was a bit galling, because he was quite right. He was not drug affected at that moment and he did not have pinpoint pupils, although he had a mark in his cubital vein suggesting that at some time he might have used drugs. But one mark did not prove the case. There was little I could do, which gave him some pleasure and annoyed his superior. Some weeks later he distinguished himself by falling out of a thunderbox with a needle in his arm. He was then sacked. At that time there was no power to take urine samples from people who did not wish to give them—and some would say that such a power should never be granted. If a person is not affected by hard drugs when examined, it is extremely difficult to diagnose whether that person is on hard drugs, and that has ramifications beyond what is in the bill.

If someone is able to do a job and is doing the job, he or she should be judged on that job performance. One of our problems—and it probably stems from the fact that it is difficult to dismiss people—is that personnel management is relying more and more on medical grounds to dismiss people. Some members of this House would be aware that an organisation called Health Quest was used by some employers, particularly the public service, to medically evaluate people—often whistleblowers or people who made life difficult for their bosses for reasons not necessarily associated with job performance—have them declared medically unfit, then invalid them out on psychiatric grounds. As employers continued down this road, particularly with whistleblowers and people who had major personality clashes with their bosses, industrial relations, personnel and human resource functions did not seem to work. Doctors were called in, almost to interfere, to achieve an aim that should have been achieved through good human resource management. It concerns me that the bill gives scope to that sort of approach.

If we are talking about addictions and their results, anyone who has worked in the personnel area would concede that alcohol is the drug that creates the most problems in the workplace. I do not know, but I doubt whether anyone has ever suggested that alcoholism is a disability. I suspect that if anyone were to make such a suggestion, he or she would get short shrift. But the management of people with alcohol problems within a workplace usually comes down to performance. If they fall asleep all the time, if their work is unreliable, or if they abuse people, they would be counselled and then dismissed for poor performance. They are not taken to a doctor who decides whether they are alcoholics before a decision is made about their employment.

It is dangerous to replace good industrial relations practice with medical judgments, particularly when they are not defined. A person who is addicted to opioides and who uses them carefully can probably continue to hold down a job for years on end without anybody being aware of the addiction. I have worked with a drug-addicted doctor who was working in two hospitals. Each hospital believed he was spending most of his time at the other hospital because he was absent for long periods. Whenever people spoke to him they had a strange feeling that he was looking at someone about 15 feet behind them; he seemed to look through them. Oddly enough, his clinical judgment was quite good. His physical examination of patients was quite good. When he was on hand to make a decision, he made a good decision.

I suspect the doctor would have been sacked immediately if it was known that he was drug addicted. Eventually, his performance was called into question, more because of his absences than his clinical judgment. Even though he was working in a medically sophisticated work force it was not clear what should be done. Ultimately, performance criteria, rather than drug addiction, settled the matter. The legislation has a number of definition and practical problems. It makes a human resource problem a medical problem. It is very difficult to dismiss people. The tendency, therefore, is to look towards members of the medical profession to assume roles that are often inappropriate. The bill is misguided. We oppose it.

The Hon. Dr PETER WONG [9.07 p.m.]: This bill is the result of the Federal Court decision in *Marsden v Human Rights and Equal Opportunity Commission and Coffs Harbour and District Ex-Servicemen and Women's Memorial Club*. The decision suggested that drug addiction could be treated as a disability under the Commonwealth Disability Discrimination Act. Since the relevant provisions of the New South Wales Anti-Discrimination Act are in the same terms as Commonwealth legislation, the fear is that the same interpretation could be given to the law in New South Wales. The Government is acting in response to concerns raised by employers about this issue.

The purpose of the legislation is to amend the Anti-Discrimination Act 1977 to prevent the prohibition on disability discrimination in employment applying where disability is an addiction to prohibited drugs. Although I can appreciate the reasoning behind the legislation, I am concerned that we may move to address one concern and, in the process, inadvertently give employers too much power to discriminate against a group of already vulnerable, disadvantaged people who need help more than prejudice. I am concerned that the wording of the legislation is not as tight as it should be. The current wording has the potential for employers to discriminate against employees based on past addiction to prohibited drugs.

We would be sending out the wrong message to those who have worked hard to overcome their drug habit and are now a productive part of the community. Instead of rewarding them for their efforts to overcome their addictive habit, this legislation, even if it is unintended, may lead to their sacking. The other concern I have, which has been raised by the Legal Working Party of the Australian National Council on AIDS, Hepatitis C and Related Diseases [ANCAHRD], is the vagueness of the legislation, which may allow discrimination against a person on the grounds of disability if "the disability relates to the person's addiction to a prohibited drug". The chairperson of the ANCAHRD Legal Working Party expressed the organisation's concern in a letter to the Minister, which stated:

> We are concerned that there are many conditions which may be construed as related to a person's addiction, including the condition of having either hepatitis C or HIV.

In support it cited a recent report by the Anti-Discrimination Board released last November on hepatitis C-related discrimination which found that:

> … discrimination against people with hepatitis C is often motivated by stereotyped responses towards people on the basis of past, current or assumed injecting drug use.

Put simply, people with hepatitis C have experienced discrimination because of an unfair assumption that the person is also a drug user. I believe the legislation as it stands has the support of both major parties. However, I understand that the Greens, who oppose the legislation, will move amendments that I think will define the objectives better and will probably help the Government to achieve its desired end.

The Hon. IAN COHEN [9.11 p.m.]: I express serious concerns about the bill. The Government claims the bill is a necessary response to a decision of the Federal Court. Mr Marsden lodged a discrimination complaint alleging that he had been unlawfully expelled from membership of a registered club. Evidence in relation to his complaint of discrimination on the grounds of disability established that he was a former heroin addict and that he was on a methadone program. The court held that opioid dependency could amount to disability within the meaning of the Commonwealth Disability Discrimination Act. The New South Wales Anti-Discrimination Act contains similar disability discrimination provisions. The bill changes the Act to specify that discrimination against a person in employment is not unlawful when the disability is a person's addiction to a prohibited drug.

The bill provides an exemption for employers. However, the circumstances in which the exemption will apply are vague and uncertain. Addition is not defined. The bill therefore presents major problems for both employers and employees. Unless the term is defined there is no way of knowing which workers are protected from discrimination. Dr Alex Wodak, who has worked in the drug and alcohol section of St Vincent's Hospital, has serious concerns in relation to this aspect of the bill. He said in an email dated 29 November 2001:

> I have often been faced with the problem of staff with drug dependence problems.
>
> The only question that concerns me is whether or not they perform their job properly. If they consume or are even dependent on drugs but their work is satisfactory, then their drug use is irrelevant as far as I am concerned.
>
> I see many problems with this legislation.
>
> What proof would be accepted of current addiction …

> This is a critical point. Relapse is a common and poorly understood problem in addiction to alcohol, tobacco, prescribed and illicit drugs. How long a period of abstinence is required before the person is said to have recovered? If a person has been abstinent for a period of years, and then unfortunately relapses, as many do, should they then be regarded as currently addicted? Even if they are trying hard to do something about it? What is the criteria for deciding who is and who is not addicted …
>
> We should be doing what we can to re-integrate drug users into the community, not find new and specious ways to lawfully disadvantage them.

I am informed that the New South Wales Anti-Discrimination Board did not know about this bill until it was introduced into Parliament last year. It is of great concern that the board was not consulted in relation to such an important bill. The bill was introduced only a few weeks after the board released its landmark report on hepatitis C discrimination. The board found a clear connection between hepatitis C-related discrimination and stigmatisation of people who have a history of drug use. It found that there was widespread discrimination against people with hepatitis C in the workplace. The report stated:

> The Anti Discrimination Board of New South Wales commenced a public enquiry into hepatitis C related discrimination in February 2001. The enquiry investigated the extent and nature of discrimination against people who have, or are thought to have, hepatitis C in NSW.
>
> The Board sought the widest possible input from people living with hepatitis C, community-based organisations, relevant government and private sector institutions, and experts in the field. The Board conducted public hearings in Sydney, Goulburn, Wollongong, Newcastle, Dubbo and Lismore, and also conducted hearings at a number of NSW prisons. The enquiry received over 100 written submissions from individuals and community-based organisations outlining people's experiences of hepatitis C related discrimination.
>
> **C-change: the report of the enquiry into hepatitis C related discrimination** was launched at Parliament House on 16 November 2001.

Under the heading "Key conclusions" it stated:

> The evidence to this enquiry clearly demonstrates that hepatitis C is a highly stigmatised condition and that discrimination against people with hepatitis C is rife. Such discrimination is often driven by irrational fears about hepatitis C infection, due to an inadequate understanding of how hepatitis C is transmitted. However, a perhaps more powerful driving force for discrimination than ignorance about hepatitis C transmission, is that infection is inextricably linked with illicit drug use, a highly stigmatised behaviour. Evidence to this enquiry makes it abundantly clear that discrimination against people with hepatitis C is often motivated by stereotyped responses towards people on the basis of past, current or assumed injecting drug use.

I think that is an important issue. Many friends and associates who used injected drugs 15 or 20 years ago are working and are oriented towards careers. They are enjoying a successful lifestyle, picking up the pieces after their addiction many years in the past. They may have difficulty dealing with hepatitis C issues, but they really do have problems when they are not accepted by the immediate community and their friends. That is inappropriate because people with hepatitis C can live a normal life. They do not have to be stigmatised in any way. I have shared households in the past with people who had hepatitis C. Once one knows the real situation, it is quite a reasonable circumstance for anyone to live with.

It is a terrible shame that those people suffer from problems associated with hepatitis C and the often chronic conditions that go with it. They should not also be ostracised. The inquiry has heard a wide range of examples of discrimination experienced by people with hepatitis C, such as rejection by family and friends, ostracism in workplaces and communities, denial of life insurance, and termination of employment. Discrimination often has a profound impact on the lives of people with hepatitis C. Discrimination frequently has damaging health, financial, social and emotional consequences, both for people living with hepatitis C and for the community. Discrimination acts as a deterrent to people accessing the health system, with all the consequences that that brings for the health of people with hepatitis C and the community.

Many of these people contracted hepatitis C many years ago when it was not understood or acknowledged as a condition that was passed on through intravenous transmission. Submissions made to the inquiry indicate that hepatitis C-related discrimination most commonly occurs in employment, the next most common occurrence being in health care. The inquiry concluded that hepatitis C-related discrimination in employment is extensive and takes many forms, including selection and recruitment practices that deter people from seeking employment, loss of employment, and harassment in the workplace. Such discrimination often has devastating financial, social and emotional effects. It is clear that many employers do not understand the obligations under antidiscrimination law. Evidence indicates that many employers have inadequate knowledge of hepatitis C transmission, the extent to which it is a risk in the workplace, and the rationale for standard infection control procedures.

This bill will allow the most vulnerable people in the community to be unfairly discriminated against. It could also allow discrimination against people who have a history of prohibited drug use even though they are

not currently using drugs. It reinforces the stereotypes about people who use illegal drugs. The Greens and others have worked very hard to overcome these stereotypes and encourage policies which focus on rehabilitation. For a while it seemed that the Government was moving towards a more enlightened drug policy. The Drug Summit that honourable members participated in some years ago was very impressive and historic. It gave rise to optimism that we could break through the stereotypes and prejudices about drug users and ventilate these issues within the Parliament.

The Premier and the Special Minister of State undertook significant drug law reform. This bill and law and order legislation such as the sniffer dogs bill show that the credibility of the Government has regressed. It is using marginalised people for cynical political purposes. It is hoping to win the next election by whipping up fear and trying to outdo the Opposition. This law and order election campaign is the wrong way to go. There is no valid reason for the Government to proceed with the bill. It is opposed by a number of groups representing lawyers who practise in human rights law and disability discrimination.

I acknowledge that the Hon. John Hatzistergos has indicated leeway to further discuss the Greens amendments, which could significantly ameliorate the problems. I hope that in discussions it will be acknowledged that the Greens amendments are reasonable and appropriate to remedy some of the significant problems with the bill. Elizabeth Morley, the principal solicitor and co-ordinator of the New South Wales Disability Discrimination Legal Centre, sent the following letter to Mr Brad Hazzard:

> This Centre provides advice and legal assistance to people with disabilities and their associates seeking to participating in society. People affected by the proposed amendment come within our client group.
>
> Our objections to the amendment can be set out under the following ...
>
> This Centre has concerns about the meaning of the Amendments. There are for instance no definitions about the meaning of "relates to the person's addiction" and "actually addicted".
>
> - "relates to the person's addiction" might be interpreted to catch a range of disabilities such as liver damage caused by say hepatitis or even say a back injury as a result of falling down stairs while under the influence of drugs (which would establish a very different treatment to that of someone injured in a car accident while under the influence of alcohol.)
>
> - "actually addicted" is not clear at all and could catch people under treatment or involved in, say, narcotic anonymous where they are coping, are managed, and are not using but may still have the psychological disorders/physical dependency. There is also concern that the wording is wide enough to catch people on methadone programs (although it would appear the intention is not to do so) because the person remains addicted to the prohibited drug and would be likely to use it in the absence of the methadone.
>
> There is a high risk that the wording of the Amendment will affect many people that it was not intended to affect …
>
> We consider that any populist view, should it actually exist in this instance, should not be the deciding factor. Presumably responsible political parties, to use a strong image to illustrate the point, would not support the introduction of slavery because "shock jocks" talked up apparent popular support for the idea. Exclusion of people from legitimate employment opportunities makes people dependent on the state, or other individuals, on crime, or on exploitative black economy employment.
>
> As ... people still have to eat and find housing. There may be other people including children dependent on the person directly affected. It is counter productive to force people who were otherwise able to do the inherent requirements of the job... out of work. It is also contrary to the current mutual responsibility policies which place emphasis on people getting out and participating in the workforce. Alternatively the person will need to seek income from other sources such as prostitution, crime or working in exploitive conditions in the black economy.
>
> The amendment will catch people who are trying to pull their lives together and who may be seeking services to address the addiction. We would consider that many people will be reluctant to seek assistance when the fact of doing so may mean loss of employment …
>
> As noted above there is already sufficient protection in the Anti-Discrimination Act to address situations where the person is actually unable to do the job. Thus it is not necessary to protect an employer's genuine interests to proceed with the amendments …
>
> In the light of the matters raised ... we consider that the Amendment should not proceed and if it was to proceed, should only do so after a period of consultation and further consideration so that any unforeseen implications can be identified and addressed.

Simon Rice, President of Australian Lawyers for Human Rights, stated in a letter to me:

> *Australian Lawyers for Human Rights* is an association of lawyers with expertise in human rights law, its principles and practice. ALHR educates lawyers in human rights practice, and offers independent expert views on contemporary human rights issues …
>
> It is proposed to amend the New South Wales Anti-Discrimination Act (the ADA) to remove from its protection a person who is addicted to a prohibited substance. Discrimination against such a person in the area of employment will be permitted …

We raise two matters for you to consider. The first is that the amendment should be opposed, as it is both unnecessary and unwarranted. The second is that if such an amendment is to be made, it should be in substantially different terms, as the current draft is rife with uncertainty and legal difficulty …

The proposed amendment is, at least, unnecessary. The issue it addresses is a circumstance already covered by the current provisions of the Act; the amendment would create uncertainty and confusion.

The ADA already allows an employer to deny employment to a person whose addiction would prevent them from performing a job effectively or safely. If a person with a drug dependency cannot perform the inherent requirements of a particular job, the ADA upholds an employer's decision not to employ that person.

Further, if the discrimination is indirect, such as when an employer imposes a requirement a person with a drug dependency cannot meet, an employer can show they would suffer unjustifiable hardship if the requirement was disallowed.

Thus the ADA in its present form effectively, comprehensively and fairly addresses the situation towards which the amendment is directed …

The amendment is itself discriminatory. Any person should be entitled to ask whether they have been treated differently or unfairly because of stereotyped assumptions, and whether they have been subjected to arbitrary treatment and judgments based on difference.

A proposal to preclude drug dependency from the definition of disability withdraws protection against discrimination for people in the community. The effect of such changes can only be to allow further marginalisation of and prejudice against these sections of the community.

Further, the amendment seriously undermines a commitment in NSW to principles of human rights, for example Art.26 of the International Covenant on Civil and Political Rights, and Arts.2 and 3 of the Declaration on the Rights of Disabled Persons. If, in the absence of a Bill of Rights, citizens are to rely on the protection afforded by legislation from time to time, then citizens must be assured that parliament will be consistent and non-discriminatory in its commitment to human rights legislation …

If the proposed amendment is to be made, it is flawed. It does not define "addiction". To leave an assessment of addiction to an employer creates uncertainty and inconsistency. Inevitably it will result in the need for legal argument in Tribunal proceedings, involving an employer in obtaining extensive medical and other expert evidence. Before any such amendment becomes law, legal and medical advice should be obtained to determine an accurate and workable definition.

The amendment will result in further lengthy and expensive expert evidence and legal argument on whether a "disability relates to the person's addiction", and on whether "the person is actually addicted".

There may be considerably more straightforward and less technically complex ways to achieve the unnecessary and undesirable aim of this legislation.

A letter from the New South Wales Community Legal Centres Group states:

The NSW Combined Community Legal Centres Group (NSW CCLCG), the Hepatitis C Councils and the NSW Users and AIDS Association views with alarm the proposed amendments to the NSW Anti Discrimination Act relating to drug addiction.

A significant number of legal inquiries to the 39 community legal centres across New South Wales and requests for legal assistance are received in relation to discrimination matters. The Hepatitis C Council and the NSW Users and AIDS Association deal daily with clients who already face discrimination in accessing many services, as well as discrimination in housing and employment.

We are all well aware of the importance of anti-discrimination law in protecting the rights of disadvantaged groups in the community. We view with grave concern any weakening of the protection afforded in anti discrimination legislation to our clients. We are seeking your support to oppose the introduction of the proposed amendments and to request that any future amendments should be based on considered and extensive research of all the relevant issues. This would provide clarification of the exact purpose of the legislation.

If the Bill were passed, it is likely to perpetuate stereotypes of what a person who is drug dependent can or cannot do and is an inequitable way of determining people's access to employment. A person's present or past drug dependence should not be used as a basis upon which to arbitrarily determine whether a person can perform the requirements of a job …

The Bill is unnecessary. Under the Anti Discrimination Act as it currently stands; any applicant with a disability must be assessed against their ability to perform the inherent requirements of a job. If a person with a disability can perform the requirements of the job they should be allowed to compete for it, and continue in employment.

Where it is an employer's view that a person's drug dependency affects their capacity to undertake a particular job safely, the employer can seek to rely on their obligation to comply with occupational health and safety (OH&S) legislation. The ADA provides that it may not be unlawful to discriminate against a person where such discrimination is necessary to comply with any other Act.

There are no decided cases under NSW and Federal anti-discrimination laws which have determined the issue about whether drug dependency amounts to a disability under either the ADA or Federal *Disability Discrimination Act 1992* (DDA). Even if the courts were to decide that drug dependency can amount to a disability under the anti-discrimination legislation, such a decision would not affect the fact that under anti-discrimination law an employer is not required to hire a person who is manifestly unfit for or incapable of doing the job required by the employer …

In a letter addressed to the Attorney General, Dr Kate Harrison wrote:

> I am writing on behalf of the Legal Working Party of the Australian National Council on AIDS, Hepatitis C and Related Diseases (ANCAHRD) regarding the NSW Government's proposal to amend the *Anti-Discrimination Act 1977 (NSW)* (ADA). ANCAHRD is the Federal Government's peak advisory body on Australia's response to and management of these diseases.
>
> It is clear that the ADA already adequately addresses concerns regarding drug addicted employees who are unable to perform the inherent requirements of their job. An employer is not required to hire nor retain in their employ a person who is incapable of doing the job required by the employer.
>
> The requirement that an employee or prospective employee must be able to fulfil the inherent requirements of the job would remain an integral part of anti-discrimination legislation even if the NSW Administrative Decisions Tribunal or the courts were to decide that drug dependence did amount to a disability pursuant to NSW or Federal anti-discrimination legislation.
>
> As a basic principle, a person with a disability should be allowed to demonstrate their capacity to perform the inherent requirements of the job. If an applicant for employment is the most suitable candidate for the position the anti-discrimination law requires that the employer make arrangements to enable that person to do that job, unless it would cause the employer unjustifiable hardship to do so. This is also the case in relation to existing employees who are capable of undertaking the tasks the particular job requires.
>
> It is also unclear how a person's "actual addiction" will be determined. This raises serious privacy and evidentiary concerns with the provision as it is currently drafted.
>
> The Legal Working Party opposes the enactment of the Bill, and urges the NSW Government to reconsider its position on the Bill.

The Greens oppose the bill but will propose amendments that address its worst aspects. The amendments will clarify the operation of the bill and will prevent unfair discrimination against people with hepatitis C, HIV and other medical conditions related to drug use. Without those amendments the legislation will leave such people without protection from unfair discrimination in the workplace by employers and others. I hope we can have further discussion on the Greens amendments, which will make the bill more reasonable and satisfactory. The bill in it present format should be opposed. We hope that the Government will at least acknowledge the appropriateness of the Greens amendments.

The Hon. RICHARD JONES [9.35 p.m.]: The Government fears that under this State's current antidiscrimination laws drug addiction could be treated as a disability. The Government does not believe that this should be the case and has introduced the bill to quell the possibility of any legal action it fears may arise. The bill focuses on employment, where the perceived problem is anticipated to cause most concern. The bill provides that it will not be unlawful to discriminate against a person on the ground of disability in employment when the disability relates to dependence on a prohibited drug.

Under those proposals, employers would not be able to discriminate against persons who have overcome their addiction or against persons who are not addicts. Many questions have been raised on the meaning of "addiction", which is not defined in the bill. Undoubtedly further legal uncertainty will arise. The Law Reform Commission canvassed this in its 1999 report. The Anti-Discrimination Board does not support the bill. The board's view is that the legislation, if passed, is likely to perpetuate stereotypes of what a drug dependent person can or cannot do. The bill operates in an effective and unjust manner by restricting a person's access to employment.

Quite simply, a person's drug dependence should not be used as a basis upon which to arbitrarily determine whether that person can perform a job. The Anti-Discrimination Board noted that this bill is contrary to the position that the board has taken on these issues in the course of the New South Wales Law Reform Commission's review of the Anti-Discrimination Act and in response to the commission's report and bill, and the findings of the "C-Change—Report of the Enquiry into Hepatitis C Related Discrimination". That report revealed that discrimination against people with hepatitis C is rife. The report noted:

> Such discrimination is often driven by irrational fears about hepatitis C infection, due to an inadequate understanding of how hepatitis C is transmitted. However, a perhaps more powerful driving force for discrimination than ignorance about hepatitis C transmission, is that infection is inextricably linked with illicit drug use, a highly stigmatised behaviour. Evidence to this Enquiry makes it abundantly clear that discrimination against people with hepatitis C is often motivated by stereotyped responses towards people on the basis of past, current or assumed injecting drug use.

The report noted that discrimination in employment is commonplace, people are ostracised in their workplace and their employment is terminated. The Law Reform Commission's report began by referring to the 1977 Anti-Discrimination Act, an innovative measure that put New South Wales ahead of other States in dealing with major areas of discrimination. Today we are witnessing a reversal of that trend. The report addressed employment and drug addiction and noted that discrimination in certain cases is inherently suspect because it is based on a characteristic, addiction, which the individual is not reasonably able to change or avoid.

Ways to move forward depend upon medical, psychological or psychiatric opinion to a significant extent and the commission believed that the law need not be clarified. Changes to the law, it was noted, would do little to clarify what may constitute a relevant addiction; it also would not clarify the underlying factual question. That report concluded that neither those submissions received by the commission nor inquiries of the Anti-Discrimination Board suggest that there is any identifiable level of adverse treatment based on drug use, and accordingly the commission did not propose any variation in the law.

In spite of the advice of the Law Reform Commission and the Anti-Discrimination Board, the Government has proceeded with these measures. There is no question that there will be adverse effects. Discrimination has a profound, disturbing impact on a person. It is damaging financially, socially and emotionally. The law is that, in general, a person has the right to apply for and be fairly considered for jobs, apprenticeships and traineeships on the basis of merit. If a person who has a dependency on a particular drug is the best person for the job and can do all the essential things that the job requires, that person should get the job. Employers can refuse to give that particular person the job if he or she cannot do the essential or inherent requirements of the job. This is the law as it currently operates, and that is the way the law should remain.

Under the Act, any applicants with a disability must be assessed against their ability to perform the inherent requirements of the job for which they have applied. A person with a disability should be allowed to compete for a job if he or she can perform all the essential requirements. Antidiscrimination law requires that if this person is the most suitable candidate for the position, the employer must make arrangements to enable that person to do the job, unless it would cause the employer unjustifiable hardship to do so.

If it is an employer's view that a person's drug dependency affects his or her capacity to undertake a particular job safely, the employer can seek to rely on his or her obligation to comply with occupational health and safety legislation. Under the Anti-Discrimination Act it may not be unlawful to discriminate against a person where such discrimination is necessary to comply with any other Act.

The Anti-Discrimination Board notes that there are no decided cases under New South Wales and Federal antidiscrimination laws which have determined the issue as to whether drug dependency amounts to a disability under either the Anti-Discrimination Act or the Federal Disability Discrimination Act 1992. Even if the courts were to decide that drug dependency can amount to a disability under antidiscrimination legislation, such a decision would not affect the fact that under antidiscrimination law an employer is not required to hire a person who is manifestly unfit for, or incapable of, doing the job required by the employer.

Quite clearly, this bill will have harmful consequences. People will even be discriminated against if their disability relates to their addiction. It has been argued that the situation may arise where a person's illicit drug addiction of 20 years ago—which has now ceased but which, however, resulted in infection with hepatitis C—could result in termination of employment because the hepatitis C was related to the addiction. The New South Wales Combined Group of Community Legal Centres views this legislation with alarm. It has expressed grave concern at any weakening of the protection afforded by antidiscrimination laws.

The bill contravenes many human rights principles, including Article 26 of the International Covenant on Civil and Political Rights and Articles 2 and 3 of the Declaration on the Rights of Disabled Persons. It also undermines any commitment to social justice and antidiscrimination such as that expressed at the recent Drug Summit, which focused much of its attention on the ways in which we can assist people to resolve drug problems. Employment was identified as a major factor in offering motivation to do so.

The measures the Government is currently pursuing fly in the face of the good work done at the Drug Summit. Everyone in New South Wales has the right to a fair go. This means no discrimination, harassment or vilification. This legislation seeks to discriminate against those who are already significantly marginalised and disadvantaged in our society. In light of these concerns it would be unconscionable for me to support the legislation.

Reverend the Hon. FRED NILE [9.42 p.m.]: The Christian Democratic Party supports the Anti-Discrimination Amendment (Drug Addiction) Bill. The object of the bill is to amend the Anti-Discrimination Act 1977 to exclude persons who are addicted to prohibited drugs from being persons with a disability to whom the unlawful discrimination in work provisions of that Act apply. As honourable members are aware, in November 2000 a Federal Court case raised the possibility that an addiction to a prohibited drug could constitute a disability under the Commonwealth Disability Discrimination Act. The disability discrimination provisions in the New South Wales Anti-Discrimination Act are in comparable terms and, therefore, the decision might have implications for New South Wales.

That is basically the reason for the bill's introduction. The bill applies to employment only; it does not apply to education, accommodation or club membership. The bill also applies to an addiction to a prohibited drug, which is defined as a prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985. Some honourable members who opposed the bill referred to people who were former addicts. The bill excludes an addict who is presently being treated with methadone. Proposed section 49PA (2) states:

(a) the disability relates to the person's addiction to a prohibited drug, and

(b) the person is actually addicted to a prohibited drug at the time of the discrimination.

Leaving aside a person who is now on methadone, that measure refers to a person who is dependent on a prohibited drug. Therefore, the point made by the Hon. Ian Cohen is not relevant. He referred to former drug addicts of 20 and 30 years ago, but this bill does not affect those people.

The Hon. Ian Cohen: There is still hepatitis C.

Reverend the Hon. FRED NILE: In my opinion hepatitis C should be treated separately, in the same way as HIV-AIDS is a class within the Anti-Discrimination Act. It would be simple to include hepatitis C and so on under those headings, but hepatitis C should not cause confusion in a bill dealing with drug addiction. Honourable members who oppose the bill have blurred the issue in trying to protect people with HIV-AIDS and hepatitis C by aligning them with this bill when they should be dealt with separately.

I note that in attacking the bill the Hon. Dr Arthur Chesterfield-Evans gave a strange illustration. He referred to a doctor who was operating in two different hospitals and who, he says, is able to successfully treat patients. How does the Hon. Dr Arthur Chesterfield-Evans know that this doctor, who is a drug addict and who is wandering between two hospitals, is treating patients successfully? Was any assessment done? He did say the doctor had a faraway look in his eyes. That is a pretty weak argument to use to attack the bill.

He said also that if people are able to perform, they should not come within the ambit of the bill, even if they are dependent on drugs at the time—for example, using or injecting heroin. A pilot may be able to fly a plane but the question is whether the pilot would be able to function properly in an emergency. It is not sufficient that he is able to perform. Many people can perform but they may not be able to carry out their duties under stress because of their drug addiction. That, too, is a weak argument. The bill has merit and should be supported by the House.

The Hon. PETER BREEN [9.47 p.m.]: The Anti-Discrimination Amendment (Drug Addiction) Bill is intended to exclude workers with an addiction to a prohibited drug from protection in the workplace under antidiscrimination law. The Government has introduced these amendments to the Anti-Discrimination Act because of the case of *Marsden v Human Rights and Equal Opportunity Commission and Coffs Harbour and District Ex-Servicemen and Women's Memorial Club*```, in which it was found that drug addiction is a disability under the Commonwealth Disability Discrimination Act.

Interestingly, the case related to a member of the Coffs Harbour and District Ex-Servicemen and Women's Club that was stripped of his membership because of his previous addiction to opiates and his current treatment for methadone addiction. The reason for introducing the legislation is defeated, as it were, by the provision that excludes methadone addiction. The Attorney General said in his second reading speech, "The Government encourages people with drug problems to seek treatment."

Reverend the Hon. Fred Nile: It does not exclude methadone from the purposes of the bill. It says it is not a prohibited drug.

The Hon. PETER BREEN: I understand the point made by Reverend the Hon. Fred Nile, but I wanted to make the point that the person who was originally the object of the legislation and whom the legislation sought to address was a methadone addict. Such persons, quite rightly, have been excluded from the bill and afforded protection.

Reverend the Hon. Fred Nile: This bill would not apply to such persons.

The Hon. PETER BREEN: The bill addresses a different problem.

The Hon. John Hatzistergos: It is Federal law anyway.

The Hon. PETER BREEN: That raises another issue: Does Federal law override this legislation? With this bill the Government is creating work for lawyers, who will argue about the meaning of the provision.

The Hon. Doug Moppett: What other purpose does legislation have?

The Hon. PETER BREEN: That is a good point. The Drug Summit in May 1999 recommend that "communities need to recognise drug users as part of the community'. However, this legislation supports the idea that drug users do not need to be part of the work force and may be excluded from the workplace with impunity. Allowing employers to put workers with addictions to prohibited drugs in a position where they are unable to earn a living is not providing support and encouragement as discussed at the Drug Summit.

Reverend the Hon. Fred Nile: It is not compulsory for employers to sack drug addicts.

The Hon. PETER BREEN: No, but the bill gives them the opportunity to do so. On the contrary, lawful discrimination based on drug addiction stereotypes workers and could cause them to be discriminated against for the rest of their working lives, even if they undergo rehabilitation. Who will employ someone who was dismissed for no other reason than that he or she was the unfortunate victim of drug addiction?

The question of dismissal raises another important issue. In the context of unfair dismissal laws, I would describe the bill as a shag on a rock. The requirements for unfair dismissal include the giving of notice and the underlying principle that a person should not be dismissed if he or she is doing a good job. This bill runs counter to the purpose and intent of unfair dismissal laws.

The bill states that the exemption applies to people who were addicted at the time they were discriminated against. How will an employer be able to tell whether the worker is addicted at the time of discrimination? Apart from an involuntary confession by the worker, there is no legal way in which an employer can make a determination regarding drug addiction. If an employee is caught stealing, for example, the employer can pursue other avenues in order to retrench that worker. The reason the offence was committed has nothing to do with it.

I am pleased that methadone and buprenorphine have been excluded from the bill's definition of a prohibited drug. At least it is recognised that those who are undergoing rehabilitation for drug addiction need support and encouragement in the workplace. However, it is a pity that support and encouragement are not extended to those who are still addicted. The Anti-Discrimination Act states that discrimination on the ground of disability occurs when one person treats another person less favourably than he or she would, in the same circumstances, treat someone else who does not have a disability.

Discrimination on the basis of disability also occurs when someone is asked to comply with a requirement or condition simply because he or she has a particular disability and other people do not have to comply with it. If these amendments are incorporated into the Anti-Discrimination Act they will cut across the spirit and intention of the legislation, which is to protect disadvantaged groups from discrimination.

I wrote to the Privacy Commissioner, Mr Chris Puplick, about this matter. I sent him a copy of the bill and asked him to comment about certain provisions of it. I put my inquiries in a personal context: my sister is a recovering heroin addict who at various times has held down part-time jobs. She also suffers from hepatitis C as a result of her early drug addiction. While managing to hold down a job she raises a family, to which she makes a positive contribution. A casual reading of the bill suggests that my sister is vulnerable to dismissal simply on the basis of her medical condition. That is a serious concern.

Reverend the Hon. Fred Nile: She is a former addict.

The Hon. PETER BREEN: She is a recovering heroin addict. That means that she is always vulnerable to addiction. She still attends Narcotics Anonymous, has treatment, and receives counselling. Even though some time has elapsed since she was described as a drug user, the fact is that she remains, by definition, a drug addict.

Reverend the Hon. Fred Nile: But she's not always dependent on drugs.

The Hon. PETER BREEN: How many lawyers will argue in how many courts about whether a person who has been addicted throughout his or her lifetime but who may not have used drugs for a short period

recently can be described as an addict for the purpose of this legislation? The bill simply does not answer that question, which a court will have to resolve down the track. The bill does not contain that definition. I asked the Privacy Commissioner about the likely impact of the bill in that situation and how he thought the bill compared with the spirit of the Federal Disability Discrimination Act. I am anxious to read into the record the reply that I received from Mr Puplick. In a letter dated 10 January 2002 he wrote:

> I refer to your letter dated 7th January 2002 in relation to the above Bill and note your request for advice regarding the implications of the proposed amendments to the *Anti-Discrimination Act, 1977 (NSW)* (ADA). I share your concern regarding the Bill and its possible impact.
>
> *Coverage of hepatitis C and drug dependence discrimination under anti-discrimination laws*
> As you will be aware, both the federal *Disability Discrimination Act 1992* (Cth) (DDA) and the ADA prohibit discrimination against a person on the basis of their disability, including hepatitis C, in specific areas of public life such as employment. Such laws apply regardless of whether the discrimination is based upon a person's actual, assumed, past or future hepatitis C status.
>
> However, it is unclear whether discrimination on the basis of current, past or assumed drug dependence is covered under anti-discrimination law. Currently, it is the ADB's policy position that discrimination on the basis of a person's drug dependency, past dependency, assumed dependency or drug dependency treatment may amount to disability discrimination. Accordingly, the Board will accept complaints on this basis.

As a matter of interest, yesterday I asked Mr Puplick how many complaints he had received in the past 12 months claiming discrimination on the basis of a person's drug dependency. The answer was none. Mr Puplick continued:

> ***Anti-Discrimination Amendment (Drug Addiction) Bill 2001***
> The Bill, if passed, will amend the ADA so that it is unlawful to discriminate against a person on the ground of disability, in the area of employment, if:
> - the disability relates to a person's addiction and
> - the person is actually addicted to a prohibited drug at the time of the discrimination.
>
> In our view, if the Bill becomes law in its current form it is likely to perpetuate stereotypes of what a person who is drug dependent can or cannot do and is an inefficient and unfair way of determining people's access to and suitability for employment. A person's drug dependence should not be used to arbitrarily determine whether a person can perform the requirements of a job.
>
> I believe the Bill is unnecessary. Under both NSW and federal anti-discrimination laws any applicant with a disability must be assessed against their ability to perform the inherent requirements of a job. If a person with a disability can perform the requirements of the job they should be allowed to compete for it. If the person is considered the most suitable candidate for the position, anti-discrimination law does require that the employer make arrangements to enable that person to do the job, unless it would cause the employer unjustifiable hardship to do so.
>
> Where it is an employer's view that a person's drug dependency affects their capacity to undertake a particular job safely, the employer can seek to rely on their obligation to comply with occupational health and safety (OH&S) legislation. The ADA provides that it may not be unlawful to discriminate against a person where such discrimination is necessary to comply with any other Act.
>
> There are no decided cases under NSW and Federal anti-discrimination laws which have determined the issue about whether drug dependency amounts to a disability under either the ADA or federal *Disability Discrimination Act 1992* (DDA). Even if the courts were to decide that drug dependency can amount to a disability under the anti-discrimination legislation, such a decision would not affect the fact that under anti-discrimination law an employer is not required to hire a person who is manifestly unfit for or incapable of doing the job required by the employer.

I seek leave to incorporate the balance of the letter in *Hansard*.

Leave granted.

> The ADB has recently undertaken an extensive Enquiry into hepatitis C related discrimination. Evidence to this Enquiry makes it abundantly clear that discrimination against people with hepatitis C is often motivated by stereotyped responses towards people on the basis of past, current or assumed injecting drug use.
>
> Submissions made to the Enquiry indicate that hepatitis C related discrimination in employment is the most common setting for discrimination, after health care settings. The Enquiry concludes that hepatitis C related discrimination in employment is extensive and takes many forms, including selection and recruitment practices which deter people from seeking employment, loss of employment and harassment in the workplace. Such discrimination often has devastating financial, social and emotional consequences. I enclose a copy of the Enquiry report, *C-change* for your information.
>
> The *Anti-Discrimination Amendment (Drug Addiction) Bill 2001* will only serve to entrench such discrimination.
>
> In the ADB's view the Bill may have broader and unintended consequences. For example, a person may be discriminated against on the ground of having a liver disease. On one view of the Bill, a person may not have any redress for discrimination which

occurs as a result of having liver disease where that disease is “related to” to their addiction. For example, the disease may be viewed a being related to their addiction where hepatitis C transmission was the consequence of illicit drug use. Many psychological problems may relate to illicit drug use and it may now be possible to use the latter to justify gross discrimination in circumstances where the former would not be possible.

There are also major privacy implications, as well as evidentiary ones, related to questions of how a current addiction is proved for the purposes of a s.49PA(2)(b) of the Bill.

I agree with your view that the Bill appears to contravene the spirit of the federal DDA, as indeed it does in respect of the ADA. It is however important to note that if this Bill is passed, the DDA may apply and complaints can still be made under the federal DDA.

I trust this information is of assistance to you.

CHRIS PUPLICK
President

The Hon. PETER BREEN: This bill cuts across the purpose and intent of antidiscrimination legislation. It singles out a group of people who are already significantly disadvantaged by the fact of their drug addiction. They have difficulty obtaining and holding employment—in many cases, the best they can do is work part time.

Reverend the Hon. Fred Nile: Recovered addicts aren't affected by the bill.

The Hon. PETER BREEN: You had your go. The bill is a most unfair and most oppressive way to treat people who are significantly disadvantaged. If the Government proposes this kind of legislation as its platform for the next election, all I can suggest is that it has lost all heart and conscience on what it is doing in this place.

The Hon. JOHN HATZISTERGOS [10.00 p.m.], in reply: I should like to comment on some points raised by members who, frankly, have not taken the time to consider the bill properly. The Hon. Dr Peter Wong suggested that a person who was previously an addict could be discriminated against even though they have overcome the addiction. That is not the case, because the bill specifically states that the person must be actually addicted to the prohibited drugs at the time of the discrimination. Therefore, those circumstances do not arise. A variation of that argument was put by the Hon. Richard Jones, who suggested that under this proposed amendment a person who may have been a past addict and subsequently overcame that addiction but contracted a disease like AIDS or HIV as a consequence of the previous addiction also could be the subject of discrimination. This bill does not deal with discrimination based on diseases; it deals with discrimination when a person is addicted to a prohibited drug. That does not mean a disease. So, that concern also does not arise.

The Hon. Peter Breen raised a number of concerns, specifically his philosophical objection to this provision. He said the amendment is unclear because it does not indicate, with the precision he would like, the point at which the discrimination needs to arise. It is important that honourable members not be confused: they should read proposed section 49PA together with the definition of "disability" in section 49A. That provision deals with "disability" on the basis of it being past, future or presumed disability. If honourable members read those provisions, the concerns that the Hon. Peter Breen says are manifested by the amendment are not as great as he says, because the terminology used in section 49A is parallel to the provisions in new section 49PA. In other words, this legislation fits in nicely with the definition. I will not comment on the concerns raised by the Greens at this time but I will do so during the Committee stage. I thank honourable members for their contributions, and I commend the bill to the House.

Motion agreed to.

Bill read a second time.

JOINT SELECT COMMITTEE ON BUSHFIRES

Appointment

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): I report the receipt of the following message from the Legislative Assembly:

MADAM PRESIDENT

The Legislative Assembly has this day agreed to the amendment made by the Legislative Council to the resolution in the Legislative Assembly's message of 12 March 2002, relating to the appointment of a Joint Select Committee on Bushfires.

Legislative Assembly
19 March 2002

JOHN MURRAY
Speaker

JOINT SELECT COMMITTEE ON THE QUALITY OF BUILDINGS

Appointment

The DEPUTY-PRESIDENT: I report the receipt of the following message from the Legislative Assembly:

MADAM PRESIDENT

The Legislative Assembly has this day agreed to the amendment made by the Legislative Council to the resolution in the Legislative Assembly's message of 13 March 2002, relating to the appointment of a Joint Select Committee on the Quality of Buildings.

Legislative Assembly
19 March 2002

JOHN MURRAY
Speaker

ADJOURNMENT

The Hon. MICHAEL COSTA (Minister for Police) [10.05 p.m.]: I move:

That this House do now adjourn.

GLOBALISATION

The Hon. IAN WEST [10.05 p.m.]: Today half the world's population lives on less than $2 a day. One billion adults cannot read a word of their own language and half the children in the world's poorest countries do not go to school. By 2050 the world's population will increase by 50 per cent and almost all of that growth will occur in developing poor countries. In a world of interdependence, our future is tied to those countries: their economics, health, education and environmental challenges are ours. However, contrary to views pushed by some in the developed world, the marketplace is a nasty place: it is not nice, it is not level, it is not free, and it certainly is not fair. To quote from an AC/DC song, "It is dog eat dog, eat cat too".

Market competition is about market share. Outcomes involve winners and losers—naturally someone will come out on top—and winning increases the ability to win more market share. Market competitors seek to gain whatever advantage they can. Without competitive advantage you come off second-best, and it is about to become an increasingly rough ride. In this brave new world we cannot afford to come second. When the gurus come to us and say that all we need is to understand concepts like free trade and a level playing field, it is at best an oversimplification. The theory sounds good and we are all told to embrace it, but this market is life and death and we cannot afford to lose. It is a serious game and we must be sure about what part of the marketplace we want to excel in.

If the market is making the decisions and we cannot afford to make steel or grow cotton, should we go for boutique niche markets? Market decisions have a big bearing on every one of us. Who will decide what we export? If we give away exports that we are told are not viable for Australia in the world marketplace, are we then just instruments of the market? Australia contributes about 2 per cent of the world's trade. Are we kidding ourselves that we can compete equally? Anyone who talks about free trade as a panacea has no understanding of how capitalism, competition and the marketplace actually work. In a globalised market, if you want your team to have the edge, you do whatever is necessary to gain that edge. The Cold War is chicken feed compared to the global marketplace.

Over the last 50 years America has been out to win the marketing war and has done an excellent job. The idea of America being a country of commercial nice guys with everyone's best interests at heart is simply a public relations exercise. The proponents of global determinism downplay social, cultural and economic differences between countries. Increasingly it is clear that globalisation is an ideological construction providing certain governments with support for their domestic policies and multinational companies with the means to shop around for the best deal. In doing so the role of the nation State is being recast. Globalisation is being put forward as a natural process and is described variously as inevitable, irreversible and beneficial.

The Australian public is being educated in the ways of economic liberalism. That is very clever because for policymakers, globalisation holds the political appeal that the nation State is, and should be, less responsible for social and economic outcomes. What is so dangerous about this is that as the global economy passes through its first synchronised downturn, developed countries like Australia and the United States are adopting nationalist fortress mentalities and policies. When it suits the climate we are assured that globalisation will promote understanding, wealth and peace between countries. Attempts by policymakers to educate the populace on the

process of globalisation—things like "benefits" and "necessary adjustments"—are forms of window-dressing. To illustrate my point, industrial espionage is an increasing phenomenon in the globalised world market. The United States Counterintelligence Centre released a report to Congress last March which stated in part:

> The risks to sensitive business information and advanced technologies have dramatically increased in the post-Cold War era as foreign governments—both former adversaries and allies—have shifted their espionage resources away from military and political targets to commerce.

In 1999 the Director of the Australian Institute of Criminology wrote, "Industrial espionage by governments and private sector institutions is a fact of contemporary commercial life." Collusion is another tactic along with preferred tendering and export pricing. The barter system is another example of risks faced in the global market. Internal trading between parent and subsidiary companies assists in avoiding tax and obtaining a price advantage. What does Australia have to do to compete with the rest of the world in industrial relations? We have world's best practice, productivity and occupational health and safety standards because of the work over many years of unions, the Australian the Labor Party and responsible employers. But we simply cannot work for $2 an hour. But even with all these difficulties and all these risks, I am confident that when Australia is able to understand the rules of the game we will be in there because we are a smart and resilient people.

AUSTRALIAN CONSTITUTION

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.10 p.m.]: It is necessary to reform the Australian Constitution and how Australian government works. These are my thoughts, and not, necessarily, Democrat balloted policy. This Friday I note the Shed a Tier group has an all-day conference at Parliament House in Canberra. The group is part of an increasing number of people talking about the necessity to change our system of government. There is a lack of co-ordination between local, State and Commonwealth governments. This is a major problem in policy areas where responsibility is shared between Federal and State governments, such as in health and education. In these areas cost shifting dominates policy-making, which results in poor policy outcomes. A deal of State legislation is now consequential on Federal legislation. State governments have been taking power from local government for some time. Co-ordination with local government is less considered, and local governments often complain that they pick up the pieces as services are withdrawn by other levels of government.

It is assumed from the Westminster tradition that there must be two Houses of Parliament in each jurisdiction, the upper one to review the lower. However, at the Federal level the number of voters does not correlate well with the number of seats in either the upper or lower House. This is also the case in some, but not all, States. For example, in the New South Wales lower House Bob Carr received 43 per cent of the primary vote, which gave him 56 per cent of the seats and 100 per cent of the power because of tight party discipline. In the upper House Bob Carr received only 37 per cent of the primary vote, the crossbench received 35 per cent and the Coalition received 28 per cent, which suggests that voters would have given the Government fewer primary votes in the lower House if smaller parties had a chance. Despite being constantly criticised, the New South Wales upper House is more democratic than the lower House.

Legislatures should be judged by how democratic they are, that is what percentage of the voters correlate with the number of seats. There is no special need for two Houses. If there were only one House with proportional representation that made decisions more slowly with more public input and less party discipline, there would be a real chance of better government in Australia. We need to go beyond the paradigms of only two parties fighting it out. Upper House members have a longer term, which causes an inherent conservatism because half of its members were elected "one term ago". This is not more democratic, but their proportional representation may be. Lower houses have an inherent gerrymander caused by single-member electorates. Although this is a problem, its major manifestation is that Parliament is losing respect because of its confrontational approach. Much of society is now seeking a more consensual model.

I suggest that New South Wales, which currently has 50 Federal lower House seats, could be divided into 10 regional electorates. These new 10 electorates would return five members each—still 50 members but from 10 regional areas. Elected by a Hare-Clark proportional system, locally based politicians would win some of these seats, but some people with significant stands on major issues would also win seats. It would be unlikely, therefore, that a single party would win a majority. There would be more diversity. This government of 50 could act as an interim State Government by combining both Houses. Later it would replace the New South Wales State's senators as State and Federal governments were combined. The Senate needs to be reformed as the gerrymander between States is too much. In this system, as the new regions were defined, progressive electoral boundary changes would cross old State borders, and problems like the Murray-Darling basin would be sorted out both by regional electorates and more open statutory bodies.

State and Federal governments would be combined by a staged amalgamation of the public services. State legislation would be divided into three categories: one, legislation that could be Federal; two, legislation that could be regional; and three, functions that could go to statutory bodies, such as environment or regional transport. The danger of centralisation is a danger to the central government getting out of touch. This happens, but technology has a possible solution. Government needs to be made open. Governments should have to justify why information should be kept secret, rather than, as at present, individuals having to prove why it should be available. Statutory authorities in an open system would then get submissions, discuss options via web sites and make recommendations to governments with reasons. New Zealand already has this official information legislation, but not yet the technical process I am advocating. I stated that New South Wales could combine its two Houses early in the process, unless it was felt that 50 was too few politicians to get through the material.

The question would then become how many Houses are needed at a Federal level. If the proportional representation and more consensual type of legislature were developed, the Senate house developed from my model would have the same number of seats as the House of Representatives currently has, but elected on the Hare-Clark system. The question would then arise as to why the House of Representatives would be necessary, except to have a gerrymandered smaller electoral system. If more politicians were needed, perhaps a more democratic way of electing them could be devised. I have not defined the changes in putting together regional government or how it would relate to current local governments. I do not know the answer. This is an ongoing process of discussion and evolution. I hope to go to the conference in Canberra because I want to join in the debate with a real contribution. I emphasise that these are my ideas and they are not yet balloted Democratic Party policy. The Australian Constitution needs a great deal of change. We must go boldly in our thinking.

ELECTRICITY INDUSTRY CONTESTABILITY

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [10.15 p.m.]: I refer to contestability in the electricity industry, specifically my concerns about the transition to a contestable market for household customers in New South Wales. Full retail contestability [FRC] for household customers began in New South Wales on 1 January, with Victorian householders given the same choice from mid January. Queensland was supposed to allow for contestability at the same time, but Premier Peter Beattie announced an indefinite delay just prior to the Federal election last year—funny about that!—citing uncertainty about the impact of FRC on household bills. The transition occurred in New South Wales, as one newspaper report stated, with a whimper rather than a bang.

Despite the fact that FRC began on 1 January, the Government advertising campaign did not commence until the third week of the month. Booklets promoting the changes have been distributed across the State, but again this did not occur until after the market was opened to competition. This raises a key question: Why did the Government not take advantage of the final billing period in 2001 and ensure that the State-owned electricity distributors enclosed the relevant information in their mail-outs to customers? This would have allowed customers to be completely informed about the changes, and may well have promoted movement between retailers as the changes began. It also would have helped State Government organisations. Ultimately, the number of customers changing retailers, the so-called churn rate, was minimal.

Figures released by the National Electricity Market Management Company [NEMMCO] show that only 195 household customers switched retailers in the period to 27 February. The Government advertising campaign promoting FRC cost $2.5 million, which equates to a total of $12,800 per transfer. If one were to take that one step further and factor in the millions of dollars spent by each electricity retailer on preparing computer billing and reporting systems, what emerges is a picture of a rather expensive exercise and not much gain. I have checked NEMMCO figures for completed retail transfers up until 18 March. They show that 337 households switched retailers. That is an improvement, but I suspect it has more to do with the fact that people have finally received the information the Government should have provided a lot earlier.

It is interesting to note that the Victorian transfer figures in the period to 18 March reveal that 3,748 transfers were completed. What have the Victorians done what New South Wales has not done? The simple answer is that Victoria was on the ball with an advertising campaign that commenced in October last year. The campaign appears to have worked. After all, 10 times the number of householders have exercised the right to choose from whom to purchase electricity. When questioned in the other place about the slow start to contestability in New South Wales, the Minister for Energy, Kim Yeadon, replied:

> Retail contestability has been more successful in New South Wales than in any other State or, indeed, in any other country around the world.

He must be the only person in Parliament, indeed the only person in the world, who believes that to be the case. Interestingly, when the Government first introduced competition for large electricity customers, advertisements were placed in newspapers around the State boldly proclaiming that cheaper electricity would be a feature of the reforms. There has been absolutely no sign of this promise in any of the literature promoting household competition. I am sure that it is because the Government does not want to be caught out with another broken promise. I am concerned that this transition to competition for household customers has been handled very badly by the Government. I am also concerned that the promised benefits of competition may not eventuate for household customers in New South Wales. The figures speak for themselves. While Kim Yeadon believes that we are the best in the world, Victoria has streaked ahead. [*Time expired.*]

CHILDREN WITH LEARNING DIFFICULTIES ISSUES PAPER

The Hon. JAN BURNSWOODS [10.20 p.m.]: I wish to refer to an issues paper of the Standing Committee on Social Issues. It will not be debated in the way that committee reports are debated in this House precisely because it is an issues paper and not a report. The Standing Committee on Social Issues had a most successful launch of the issues paper, which will help to publicise and make people aware of the issues the committee is raising. I pay tribute to those who made the launch a success. The issues paper deals specifically with the plight of children with learning difficulties and their families. As it dealt with the inquiry, the committee found that those problems tend to be sometimes only part of various systemic problems we face in the delivery of children's services by the multiplicity of departments, agencies and levels of government that do so.

In teasing out all the issues involved, the committee was incredibly well served by those who gave up their time to liaise with people in their areas of interest, prepare their speeches and come and speak at the launch. I thank the Minister for Education and Training, John Watkins, for opening the proceedings, which dealt with an inquiry given to the committee by his predecessor, John Aquilina. I particularly thank the Chancellor of the University of New South Wales, Dr John Yu, who holds an amazing variety of positions and has a great range of interests dealing with children. He is often remembered for his work in his former career as the chief executive officer of the Children's Hospital—first in Camperdown and then at Westmead—and as a paediatrician. Subsequently he has played an important role, first in the University of Western Sydney and now as Chancellor of the University of New South Wales. Dr Yu also chairs the advisory committee for the Commission on Children and Young People. His expertise is wide-ranging and he has a deep commitment to children's issues.

The committee was able to call on a number of speakers with a range of different backgrounds to speak at the launch, to share their views and to spark off one another as they raised the issues across the different systems relating to children. In that context I thank Professor Graham Vimpani from the University of Newcastle, an expert in children's health, and Alan Rice, formerly from the Department of Education and Training but now a Fellow at Macquarie University who in that capacity is continuing his deep interest in the early education of children. The committee was fortunate to have at the launch Warren Johnson, formerly Executive Officer of the Parents and Citizens Federation of New South Wales. He has a wealth of experience dealing with school education and the parents and children involved. He is presently the chief executive officer of the community organisation known as Learning Links, which operates in the St George area. That organisation plays an important role in co-ordinating and providing a variety of support services for children at risk in their preschool years or having learning difficulties in their school years.

Warren was accompanied by Cathy Mullen, a parent who has been assisted by Learning Links in helping her to deal with the problems faced by two of her children with learning difficulties. Finally, the fifth member of the panel who helped on the day of the launch was Tonia Godhard, the chief executive officer of SDN Children's Services, who was able to speak from her depth of knowledge of providing targeted child care and preschool services, particularly in some of the most disadvantaged areas of Sydney. June Wangman was meant to be there but was unable to attend owing to a death in her family. She would also have been able to give the committee the benefit of her expertise in child care. Those people, plus the 120 others who were present, made for a very successful launch. The committee is hopeful that its final report will be able to draw on the expertise and passion of all those people. [*Time expired.*]

CAMDEN PROPERTY MARKETING PTY LTD

The Hon. CHARLIE LYNN [10.25 p.m.]: Last Wednesday night I spoke on an issue involving the Department of Fair Trading and Mr John Leach, a real estate agent of Camden. Mr Leach has had his licence

suspended for 60 days by the director-general of the department. After examining all the documentation pertaining to the case and after lengthy discussions with Mr Leach and his solicitor I am of the strong view that the investigative process followed by the Department of Fair Trading has been corrupted. The 60-day suspension of Mr Leach expired yesterday and he was greatly relieved that he had not received any further notice from the department. This morning he made contact with three real estate agencies that have offered him a job, and he is looking forward to getting his life back together after what has been a nightmare experience for him.

At 5.30 p.m. today I was advised by Mr Leach's solicitor that the Department of Fair Trading plans to suspend his licence for a further 60 days. I called Mr Leach to check this information about an hour ago and he is simply devastated. When I completed my speech on the issue last Wednesday the Treasurer asked me if I had contacted the relevant Ministers about the issue. I advised him that I had done so. Let me reiterate that I am not arguing a case for Mr Leach's innocence or otherwise. All I am asking is that he be given a fair go and the opportunity to have his case heard before a magistrate in a proper court of law. The treatment he is receiving at the moment is something one would expect out of Gestapo headquarters.

I wrote to the Minister for Fair Trading on 27 February. On 7 March I received a response from the Minister's private secretary to say that the matters raised were presently being examined and that the Minister would be in touch with me shortly. I have received nothing since. I also wrote to the Minister for Police on 27 February requesting that he direct the Camden detectives to expedite their investigations into the issue so that the person who is alleged to have actually misappropriated the money could be brought to justice. I have not even received an acknowledgement of that letter. Six months after the fraud was reported, the person who is alleged to have misappropriated the funds is still walking the streets and the person who detected and reported the misappropriation is being treated as a criminal by the Department of Fair Trading—an injustice if ever there was one.

I also wrote to the Ombudsman, who has washed his hands of the issue. I have since written to the Independent Commission Against Corruption [ICAC] asking the commission to investigate my allegation that the proper process of the investigation by the department has been corrupted. I have recently learned that the senior investigator for the Department of Fair Trading, Mr Robert Laughton, who conducted the initial investigation against Mr Leach, has since been removed from his job because he was caught out lying to his superiors just before Christmas. The Minister might like to check the veracity of that information, if ever he gets around to having a look at this issue.

This is the third time I have brought this issue to the attention of the House. Let me reiterate my claim that this is an intolerable situation. If the Department of Fair Trading has sufficient evidence to issue a notice of suspension against Mr Leach, based on grounds of unfitness, it should have no hesitation in filing a complaint and summons under section 29 in the New South Wales Licensing Court. If, on the other hand, there is still insufficient evidence—or the investigation, which has been in progress for six months so far, is still in progress—it is manifestly unfair that any notice of suspension was ever issued.

If the Minister is unable or unwilling to instruct the director-general of his department to either file a complaint or lift the suspension, he should resign and make way for someone who is willing to exercise the necessary leadership to keep bureaucrats accountable and ensure that honest, hard-working Australians are given a fair go. Similarly, if the Minister for Police cannot get his detectives to at least interview a person who has reported a serious offence six months after it was reported, he should go as well. I would hate to think that the reason the Minister has not taken any action is that there is no stunt value in this type of offence. I seek leave to table copies of the letters I have sent to the Minister for Fair Trading, the Minister for Police, the Ombudsman and the Commissioner of the ICAC so that members of this House can decide for themselves whether Mr Leach deserves a fair go.

To make it easier for the Camden detectives when they get around to investigating the issue, I seek to table a fraudulent receipt issued by Mr Alex Cameron on behalf of Camden Property Marketing dated 1 August 2001 on L. J. Hooker letterhead for the sum of $92,000. I plead with the Government to take action to either direct the Minister to bring this matter before a proper court of law or direct the director-general to lift the suspension. I seek leave to table the documents.

Leave not granted.

The Hon. CHARLIE LYNN: It really surprises me that leave was not granted because these are letters that I have written to Ministers imploring them to give Mr Leach a fair go.

The Hon. Jan Burnswoods: Point of order: Surely it is inappropriate for the honourable member to quibble with the decision of the House. If he does not show his documents in advance, he cannot be surprised when leave is not granted for their tabling. Very rarely are documents tabled during adjournment speeches. The decision has been made.

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): Order! The speaking time of the Hon. Charlie Lynn has expired.

FREE TRADE

The Hon. MALCOLM JONES [10.30 p.m.]: By coincidence, I wish to speak on a topic similar to that raised by the Hon. Ian West this evening: free trade. Firstly, with great disappointment I mention tonight the most regrettable piece of legislation to come out of the United States for many years, the Farm Bill. Two hundred years ago Adam Smith identified that the path to wealth creation for all communities is free trade. This reality has shaped economics since then. All political moves to interfere with this principle have ended in disappointment. Nation states such as Venice, New Orleans, Singapore and Hong Kong all flourished while totally focused on free trade. Venice and New Orleans went into decline when they became subservient to hinterland political influence, as will undoubtedly happen to Hong Kong. Politics from mainland China has already started to impact on Hong Kong as expatriate visas are now not easily renewed. Singapore's meteoric rise since the 1960s is totally and directly related to free trade.

The world's trading nations have been trying to reach trade agreements under the General Agreement on Tariffs and Trade, GATT. Australia was once a very protected economy but since the Keating days, and further encouraged under the current Coalition Government, it has taken a global attitude towards business and done exceedingly well. Some manufacturing industries went offshore. Yes, there was pain in the reorganisation and, yes, in the short-term many people had to re-equip, retrain and do things differently, but Australia is much better off now than in the periods of great protection and tariffs. The modernisation of Australian industry during the 1980s and 1990s has placed the living standards of Australians, especially urban Australians, where they should be, amongst the highest in the world.

Two other compounding factors should be noted. First, Australia has had to go through the pain and discomfort of establishing first-class prudential reporting. Second, the banking system had to be changed to allow the influx of capital to finance the technological revolution. The changes to the reporting of company activities, whilst not perfect, is the single most important reason, and it did enable Australia to withstand the Asian financial crisis of the late 1990s. The changes to the banking system did enable adequate financial capital to flow into Australia. This created its own problem—the blowout of public, corporate and personal debt. Unfortunately, the capital was required to fund much-needed high-tech equipment which had to be imported. This meant that the capital had then to be exported. However, without the modernisation of Australian industry Australia would be in a sorry position.

When the United Kingdom embraced the lure of joining the great experiment of a united Europe the special trading status of Australia and New Zealand was downgraded to the degree that they were considered merely old friends who play cricket together. Australia was bound up in import tariffs, grossly inefficient manufacturing industries, and an extremely strong trade union movement, which was reluctant to demonstrate its current flexibility. Over the next few years Australia had to set sail to become a free trade nation. To a large extent it has achieved this, and we enjoy a very strong economy. The United States, which for so long has bragged about its role as the leader of the free world, the champion of free trade et cetera, et cetera, has now caved in to farming and industry lobbies that demand protection—protection of its workers and businesses as opposed to change. All economies will undergo change: it is the nature of things. Had the United States opted for competition instead of protection, then perhaps not immediately but in a remarkably short time following pain, sadly pain, circumstances would have become much better for everyone. That is the way Adam Smith wrote it, that is the way it has worked out for the past 200 years, and that is the way it will be.

Motion agreed to.

The House adjourned at 10.35 p.m.