

LEGISLATIVE COUNCIL

Thursday 9 May 2002

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

The President offered the Prayers.

HOME BUILDING AMENDMENT (INSURANCE) BILL

LEGAL PROFESSION AMENDMENT (NATIONAL COMPETITION POLICY REVIEW) BILL

CRIMES AMENDMENT (BUSHFIRES) BILL

Bills received.

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

Motion by the Hon. Michael Egan agreed to:

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

Bills read a first time.

TABLING OF PAPERS

The Hon. Michael Costa tabled the following papers:

Coroners Act 1908—Report entitled "Report by the NSW State Coroner into deaths in custody/police operations: 2001"
Public Defenders Act 1995—Report of Public Defenders for year ended 30 June 2001

Ordered to be printed.

PETITION

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**.

BUSINESS OF THE HOUSE

Precedence of Business

Motion by the Hon. Michael Egan, by leave, agreed to:

That Government Business take precedence of General Business after Private Members' Business item No. 8 inside the Order of Precedence is completed.

ANTI-DISCRIMINATION (HETEROSEXUAL DISCRIMINATION) AMENDMENT BILL

Second Reading

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

PUBLIC HEALTH AMENDMENT (JUVENILE SMOKING) BILL

Second Reading

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

GOVERNMENT (OPEN MARKET COMPETITION) BILL

Bill introduced and read a first time.

Second Reading

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.14 a.m.]: I move:

That this bill be now read a second time.

I have spoken in this House on more than 30 occasions about the need for governments—particularly this Government—to be more open and accountable. I organised a forum about open government in November last year that was attended by speakers from as far afield as Canada and New Zealand. The transcript of the seminar's proceedings has been on my web site for some time and hard copies are also available. My State and Federal party colleagues have introduced similar legislation in their jurisdictions. The Australian Democrats are committed to openness and accountability in government and this aim is reflected in the Federal Australian Democrats bill, the Freedom of Information (Open Government) Bill. My colleague in South Australia the Hon. Ian Gilfillan has introduced a bill entitled the Freedom of Information (Miscellaneous) Bill.

The problems with the Federal freedom of information [FOI] regime are reflected in the regimes of our States, including New South Wales. Problems include lack of independent oversight of the FOI process, a persistent culture of secrecy, prohibitive charges and excessive use of exemptions, especially commercial in confidence and Cabinet in confidence. Strangely, New Zealand has led the way in the provision of government information to the public. The Official Information Act came into force in 1982. It was widened in 1987 and then reviewed in 1998 but not amended. The Chief Ombudsman of New Zealand, Sir Brian Elwood, spoke at the open government forum in November and praised the success of the New Zealand legislation. He said that the usual concerns about the sky falling in were expressed when the legislation was introduced: business claimed that it would collapse, the Government was not supposed to survive and so on. None of this happened, and the regime works very well.

I have argued for a long time that the paradigm of this country's FOI legislation is wrong. The presumption is non-disclosure unless there is a reason to disclose. The New Zealand legislation turns this presumption around so that information is made available unless there is a good reason under the Act to withhold it—claims of commercial in confidence or Cabinet in confidence are not enough. As the years of the Carr regime have dragged on, it has become more apparent that less and less important information is seeing the light of day. Requests for information are routinely denied, usually with the pathetic cry that the information is commercial in confidence or is a Cabinet document.

I recently sought to obtain a report by Ron Christie, the erstwhile chief executive officer of the Olympic Roads and Transport Authority. The report, entitled "Long term strategic plan for rail", is an examination of Sydney's future transport requirements. I asked the Minister for Transport, and Minister for Roads for a copy of the report and was told that it was a Cabinet document. The report is public property and should have been available to all. Yet it was kept from the public for 18 months and released as I was completing a speech on a motion moved in this House requiring the Government to provide that information. It is clearly ridiculous that Opposition and crossbench members must line up to demand of the Government information compiled by public servants about public planning. It is a poor, even outrageous, situation.

Over recent years in this House I have seen calls for contracts for the M2, the M5 East, the Fox Studios development, Luna Park, and the Sydney Harbour Tunnel. All requests to make contracts public have been initially denied, and the upper House has had to get what information it can. At times the Government writes into the contracts that the agreement will be confidential, so it can then claim a breach of contract if the information is provided. It then says it is doing so in the interests of the private sector. One can only reflect that in fact it is the Government's job to look after the interests of the public sector, and that is what it ought to be doing.

The Government has also been at pains to obfuscate and frustrate the committee system, and it uses a number of tactics to do that. It is often a snow job: truckloads of useless documents are provided so that members do not have time to go through them all and the relevant information is lost. By the time it is realised that the relevant information is not there, opportunities have been lost. At other times it is a matter of providing witnesses with enough information to present and fill the allotted time so that there is not enough time for questions. Questions can then be taken on notice or other techniques used so that they are not answered.

This bill seeks firstly to ensure that all government contracts and their associated tendering documents are made publicly available by all public authorities. Public authorities are defined in clause 3 of the bill as the Government of New South Wales, a statutory body representing the Crown, an authority constituted for a public purpose, a State-owned corporation or any of its subsidiaries, or a council or county council within the meaning of the Local Government Act 1993. The second object of the bill is to allow the Auditor-General to inspect and examine the accounts of persons or bodies that receive Government grants.

It is fair and reasonable that bodies that receive public moneys should be able to, and have to, account for how that money is spent. Since the bill was first drafted I have had input and consultation with a number of people and bodies. Following these discussions I have made changes to the draft, and those changes are included in the bill tabled today. The changes that I have made already provide that, firstly, only successful tenders are to be made public—unsuccessful tenderers do not have to have their information made public; secondly, the Ombudsman is to oversee the compliance of government departments, as I believe a bill without an enforcement provision will fail of necessity; and thirdly, the Auditor-General will be given power to carry out a performance audit on the delivery of goods and services from someone who gets a government grant. The bill as tabled may need further refining at the Committee stage, and I know that both the Auditor-General and the Ombudsman have further suggestions to be included. I will be consulting all interested parties before the House returns in June and I welcome any input that honourable members may wish to provide.

I believe that some amendments will result from the input of the Auditor-General and the Ombudsman, and I am happy for that to be done in an open way, as I am advocating for the Government. There is no inconsistency in all of this. I will not go into the various possibilities of those amendments. As I have said, the bill is quite clear in its endeavor to make government contracts open, to see where government money goes, and to have a mechanism for enforcing that through the Ombudsman's office as opposed to having it come from the agencies that are asked the questions—as in the freedom of information situation, where people are obviously far more concerned about any flack that comes from their superiors than they are about flack from the person requesting the information. I commend the bill to the House and would be happy to have input from other honourable members in terms of amendments that we can discuss. Hopefully that will result in a final bill that will be accepted by all honourable members of this House.

Debate adjourned on motion by the Hon. Don Harwin.

GENERAL PURPOSE STANDING COMMITTEE No. 4

Report: Budget Estimates 2001-2002

The Hon. JENNIFER GARDINER [11.25 a.m.]: I move:

That this House take note of Report No. 6 of General Purpose Standing Committee No. 4 entitled "Budget Estimates 2001-2002", and in particular the Committee's adverse report on the failure of the Minister for Transport and Minister for Roads to provide satisfactory answers to many of the Committee's questions on notice and further notes that this exemplifies the lack of ministerial accountability, secrecy, and hubris that pervades the Carr Labor Government.

I gave notice of the motion in September last year and nothing has changed, except that we are soon to commence budget estimates committee hearings for 2002-2003. It is timely to discuss this report as the Legislative Council prepares itself for those very important estimates hearings, particularly leading up to an election year. Naturally, all members will be keen to extract from the Government as much information as possible about the budget and the planned expenditure for the coming year—and in some cases three years, as in the case of the Department of Health. It is a matter of great concern that during the estimates committee hearings with respect to General Purpose Standing Committee No. 4, the Minister for Transport, and Minister for Roads, Mr Scully, was so obvious in terms of his obfuscation and his failure to answer questions that the committee noted, in tabling its report, that during the hearings in June last year Ministers took a number of questions on notice. The report of the committee states:

The Committee lodged original questions on notice in relation to several portfolio areas. The Committee has received written answers to questions placed on notice. The Committee was disappointed that the information provided in response to many of its questions on notice to the Minister for Transport, and Minister for Roads Mr Scully was unsatisfactory. Indeed the Minister failed to provide useful answers to many questions.

I want to go through some examples of why the committee reported in that unusual vein in the hope that there is a more satisfactory outcome from this year's estimates committee hearings, not only with regard to the Minister for Transport, and Minister for Roads but also with regard to other Ministers. The Minister for Transport, and

Minister for Roads was particularly conspicuous because of his failure to answer questions at last year's estimates hearings; but he was not in a class of his own. He might have been top of the class but he was not in a class of his own. I would like to provide some examples to explain why the committee felt prompted to make such a report to this Parliament. The Hon. John Jobling asked the Minister for Transport, and Minister for Roads:

What amount from total expenses have you and your specific staff spent on Cabcharge expenses?

That is a fairly straightforward question.

The Hon. John Jobling: It should have been a simple answer.

The Hon. JENNIFER GARDINER: One would think it would be a simple answer, but this was the answer signed by the Minister for Transport, and Minister for Roads:

The Minister's office Cabcharge account is funded from the allocation provided by the Maps section in the Premier's Department through the Roads and Traffic Authority.

He did not answer the question. The Hon. Charlie Lynn asked this straightforward question of Mr Scully:

In relation to 'customer satisfaction surveys carried out by CityRail'

- (1) When was the last quarterly customer satisfaction survey carried out?
- (2) Will you also advise when the next survey will be carried out?
- (3) Will you be able to provide what the results were of the most recent survey?

This is the answer that Mr Scully signed off on to this House:

- (1-3) The State Rail Authority welcomes constructive feedback from its many customers as a valuable management tool.

That is an arrogant reply. There was absolutely no attempt to answer the question. It was a specific question about customer satisfaction surveys—when was the last quarterly one done, when will the next one be carried out and what are the results of the most recent survey? We all know that the CityRail area of the transport portfolio has caused community concern. Much dissatisfaction has been expressed to parliamentarians about the state of our trains, safety and the cleanliness of carriages. There has been dissatisfaction with rail timetables. The Minister provided an arrogant and totally irrelevant reply to that straightforward question. It is a classic case of a government that does not want to give any sensible information to the Parliament—I guess because it is so embarrassed about its performance in relation to dissatisfaction with CityRail.

The Opposition asked similar questions in relation to Countrylink customer complaints surveys. That question generated the same answer. Countrylink timetables have been a big issue in country New South Wales for some years. Country passengers are treated with the same contempt by this Government. The same question was asked of Mr Scully with respect to customer satisfaction surveys in relation to public bus services. Guess what? The answer was the same. There was no attempt to deal with the question in any serious fashion. The Hon. John Jobling asked this question:

In relation to 'flood damaged roads'

- ... What councils have applied for and received funding for flood-damaged roads over the last three years?
- ... Can you match that with the maintenance funding for each of those councils over the last three years?

The answer signed off by Minister Scully was:

The State Government has provided \$504,783,135 maintenance funding, including additional funding for the repair of flood damaged roads, to councils (including the unincorporated area) over the past three years.

134 councils (including the unincorporated area) have received flood disaster funding over this period.

The question asked which councils applied for the funding and where the money went. There was no attempt whatsoever to answer those questions specifically, when the database in the Department of Transport would undoubtedly have the information available at the press of a button. That is a simple example of a failure to

provide basic information to this House in response to questions asked at estimates hearings. The Opposition asked Mr Scully a question about the lightning data tracking system. The questions involved issues that had had quite a bit of prominence in relation to Mr Scully's administration of his portfolio. He was given notice of the questions so he did not have to think up the answers on the spot. He was asked:

Has State Rail purchased a lightning data tracking system for the Rail Co-ordination Centre? What was the cost of purchasing the system? Did the contract to supply the system go to tender? If so, when and who was the successful contractor? If the contract was filled through quotes, from which companies were quotes sought?

His answer was a glib, two-line statement:

I am advised that a system was purchased in full accordance with the State Rail Authority's procurement guidelines.

The Hon. John Jobling: That is a rubbish answer.

The Hon. JENNIFER GARDINER: Yes. There was absolutely no attempt to take the question seriously. We will see whether we can get better answers to the same questions in this election year. If not, we will try other tactics. The Hon. Charlie Lynn asked this question about train cleaning, which is an issue of great concern to city and country passengers:

... How many mobile cleaners operate on trains?

... How many hours are allocated each week, in total, for mobile cleaners working on trains (not per cleaner, but the overall number of cumulative hours per week).

So we were not asking for data that was difficult to collate. The question continued:

... Where do they operate?

... Between what hours do they operate?

Mr Scully signed off on this answer:

State Rail's mobile cleaning teams operate throughout the CityRail network, with a particular focus on moving through trains following morning and afternoon peaks.

Wow! Again there was no attempt whatsoever to provide a serious answer. We would have happily given the Minister an extension of time to provide a proper answer—we are reasonable people—but he could not be bothered because he is an arrogant Minister. He thinks he is there for ever and that he can treat the House with complete contempt. Violence on trains is another high-profile issue. The Minister was asked:

Which ten CityRail stations record the highest levels of violence?

The answer provided was:

The provision of such information requested by the honourable member may jeopardise current operational activities.

The Hon. John Jobling: What activities?

The Hon. JENNIFER GARDINER: There is no evidence of there being activities, but the answer said that providing information could jeopardise those activities. The answer continues:

CityRail remains committed to the security and safety of its many passengers...

Rave, rave, rave. In essence, he did not answer the question. He provided information that was not asked for, but the material that was asked for was not provided. There was also a question about the infamous millennium trains, a contentious issue this year, as it was last year.

The Hon. John Jobling: They were the Olympic trains.

The Hon. JENNIFER GARDINER: Yes, then they turned into the millennium trains. Now there are problems with them for 2002. We asked:

... When will the first ... carriages be incorporated into the CityRail system to commence carrying passengers?

... How many ... will be carrying passengers by 31 March 2002?

... When will the delivery of the first stage of the Millennium Train project be completed?

... How many new Millennium Train carriages will be operating ... June 2002 ... June 2003 ... June 2004?

The answer provided was:

The Millennium Train represents a significant investment by this Government in public transport. This project will see extra capacity enter the rail network, and has created significant employment opportunities in Newcastle and the Hunter region. I am advised that the first carriages will become progressively available later this year.

He did not answer the question about what was the plan by 31 March 2002, how many of the carriages would be carrying passengers—we all know in retrospect that the answer is none—what was the expected delivery date for the first stage of the project to be completed, and how many trains, according to the department's plans, would be carrying passengers in the middle of 2002, 2003 and 2004. The answer was a non-answer.

The Hon. John Jobling: I suppose it did not matter—he did not have any drivers, and he still has no drivers.

The Hon. JENNIFER GARDINER: Another issue pursued by the committee concerned the number of drivers. It has come to pass that the questions asked by the Opposition two years ago were right on the mark. That committee prompted the Minister to take remedial action to fix the problem relating to the shortage of train drivers. However, that shortage is still a problem. The Opposition asked questions that were justified and not terribly obscure. We asked questions the public wanted us to ask. However, the Minister's answers were inadequate and did not demonstrate accountability in his duties. The Opposition asked about car park security near railway stations, a question that is of particular interest to women commuters. We asked how many complaints had been received by either State Rail or the Department of Transport, which car parks received the most complaints during 2000-01, and what sort of complaints they were. The Minister's glib response was that he had been advised that State Rail had received a minimal level of complaint in relation to those matters. Another classic *Yes Minister* response! I could go on for hours giving a discourse on Mr Scully's non-answers. But I trust that I have given the House a sense of the flavour of our frustration due to the arrogance of the Minister.

The Hon. John Jobling: You have got at least another 15 minutes—give us some more!

The Hon. JENNIFER GARDINER: I could, if you like.

The Hon. Ian Macdonald: Don't listen to him.

The Hon. JENNIFER GARDINER: We always listen to our Whips. The Hon. Charlie Lynn asked about the number of reported criminal incidents on Countrylink trains during 1999, 2000 and 2001, and referred to a specific area of the budget papers. The Minister answered that he had been advised by Countrylink that security incidents had shown an encouraging decline, but he made no attempt to provide any data to the committee as to the basis on which he could make such a comment. Referring to the far west and the south-west of the State, the Minister was asked why there had been a \$9.7 million reduction in the money allocated to the Broken Hill rail car project. The Minister was asked whether Broken Hill and Griffith would have their promised rail cars by December 2001. The Minister did not answer the question.

The Opposition asked about the level of complaints relating to bus services run by the State Transit Authority. He was asked about staffing and ticket machines at railway stations across the network. He was asked what stations have neither station staff nor a ticket machine and how customers travelling from those stations could avoid being fined. He was asked whether there were any plans to equip those stations with staff and/or ticket machines in the next two years and, if so, which stations would gain such facilities. The Minister answered that some stations that experience low levels of patronage may not have ticket vending facilities on the station. The Minister said that where there were no ticket selling devices or facilities at the original station customers travelling without a ticket are required to pay at their destination. The Minister said that he had been advised that CityRail was investigating the installation of ticketing facilities at various stations around the network. Again, that is an extraordinarily unsatisfactory answer to the people who are confronted with going to stations at which no staff can be sighted and where there is no ticket machine. Most people want to do the right thing. Again, the Minister for Transport was unable to give a satisfactory answer.

For some years, Countrylink has advertised its tourist packages, encouraging people to travel by train to the hinterland and the coast. The Opposition asked the simple question of how much revenue Countrylink had made through its promotion of tourist packages in 1999, 2000, 2001, and what was the estimated revenue for 2001-02. That question was perfectly in line with the whole purpose of an estimates hearing. The Minister's answer was that Countrylink's revenue had shown growth over recent years and that it had a range of exciting and affordable products for the tourist market. The Minister did not attempt to produce any data that showed any growth in any area or what packages had triggered that supposed growth.

The Minister even said that the projected income for 2001-02 was still being finalised but was expected to be in line with 2000-01 figures. Although the estimates hearings were held the estimates have not been finalised. No wonder the Treasurer is deferring the State budget this year. The Opposition asked questions about the amplification of the line between Richmond and Blacktown and what the total cost would be. The answer given was that the project costs were managed in accordance with State Rail's project management and reporting procedures. In other words, when the Minister was asked for the estimated total cost of the amplification of the railway line he did not answer. The estimated total cost was not provided to the committee. The Minister was asked how many stations had been completed for easy access since 12 October 2000, an important question for elderly or disabled commuters. The Opposition wanted to know the timetable for the completion of the work on railway stations to make them more accessible to such commuters. Again, the Minister failed to give specific answers. He said that a further five stations were due for completion in the near future, but, of course, he did not say which stations he was talking about.

The Hon. John Jobling: He did not tell us how many had been started.

The Hon. JENNIFER GARDINER: No, he did not say on which stations work had commenced. The level crossing program has always been of great interest to many people, particularly those in small country towns at which there continues to be, sadly, accidents. The Opposition asked questions about what was involved in the \$8 million level crossing program provided for in last year's budget papers. Again, the information provided by the Minister was of a general nature, and did not list the locations where work would be carried out. The Minister said that 25 level crossings would be upgraded in 2001-02, but chose not to provide any specific information.

Another classic non-answer related to information technology [IT]. The Opposition asked what was involved in the \$16.25 million information technology program at the Rail Infrastructure Corporation head office. The answer was that the Rail Infrastructure Corporation advised that information technology equipment was being replaced in the normal course of business. Each proposal is subject to normal approval processes. The IT system must not be too terrific if it generates such generalised information. If, at the touch of a hand, the IT system cannot produce information that the Parliament of New South Wales would like to know about obviously the IT program is a failure. A classic question that one would expect the Opposition to ask, and we did, related to taxpayer-funded advertising. Mr Scully was asked for each of his portfolio agencies, and transport is a huge portfolio, how much money was spent on advertising in 2000-01. What was the estimate of money to be spent on advertising in 2001-02, and could he provide a list of each campaign and the cost for those items.

Mr Scully's answer was that all advertising is undertaken in accordance with Government guidelines for advertising. The exact cost will depend on the nature and scope of advertising identified for 2001-02. We know that Ministers would have had a bureaucratic session to prepare such facile, useless and meaningless responses to Opposition questions, and that was the form of words they came up with for the 2001-02 estimates. No information whatsoever has been provided to this Parliament about the cost of each campaign. Taxpayers across the State who are currently watching television are being treated to yet another feast of taxpayer-funded Government advertising a year out from the election. Is the public entitled to know how much each of those campaigns for each portfolio will cost? Yes, of course the public is entitled to know. Why will not the Carr Labor Government let the people of New South Wales know the answers? The Opposition will certainly pursue the secrecy that surrounds the Government's use of taxpayers' money in the forthcoming election campaign.

We asked a question about an issue highlighted by General Purpose Standing Committee No. 4 the year before when we exposed the special payouts to senior public servants in Mr Scully's portfolio. During the estimates hearings the public learned about bonus payments to senior office holders and senior bureaucrats in the rail system, for example, that was falling to pieces. Last year we asked Mr Scully whether he could provide information relating to performance payments to public servants, and specifically whether he approved the bonus payments. He simply referred to a media release put out by the Premier in August 2000, again as a result of pressure from the Opposition. If it were not for the estimates hearings and the follow-on from them we would

have gained no information at all. Even though we are very disappointed in some of the answers from a number of Ministers, at least we get some answers sometimes when we put the public servants under pressure. We look forward to doing that again this year.

Another question related to legal expenses that are part of the budget details for each portfolio. We wanted to know the extent of legal expenses and, again, asked perfectly reasonable questions. We asked specifically what were the legal expenses for each of the portfolio agencies under the heading "Transport and Roads", what was the breakdown and how much was spent in 2000-01. Again, the answer was a general one: Expenditure on legal expenses followed appropriate review of the circumstances and need for such expenditure within appropriate guidelines. That answer is blatant avoidance of the question. It is not difficult to provide information. If the Minister wanted further time, the committee would have been perfectly happy to provide it. As chairman of that committee I would have been perfectly happy to do it. Honourable members will get the sense of why the committee reported, in particular, about Mr Scully's non-answers.

The whole attitude of the Carr Labor Government is very well summed up by the exposition in the *Sydney Morning Herald* about another general purpose standing committee estimates hearings last year of which I was a member. That was the infamous hearing at which Mr Knowles, the Minister for Health, appeared along with the then Director-General, Mr Reid. As it turned out, it was his last appearance before an estimates committee hearing. It was revealed that Mr Knowles and Mr Reid had run a private contest prior to the estimates hearings to include a reference to "iterative algorithm" and "latex aeroplane" in their answers without anyone noticing. They had decided that during answers to questions at the hearing of this House they would include those words. They were playing a game with the Parliament, which is the ultimate example of arrogance and patronising behaviour.

The Hon. Richard Jones: An abuse of this House.

The Hon. JENNIFER GARDINER: As the Hon. Richard Jones said, it was an abuse of the operations of the House of review.

The Hon. Richard Jones: And contempt.

The Hon. JENNIFER GARDINER: Yes. It is an example of the Minister and the then Director-General holding this House in contempt.

The Hon. Michael Egan: More contempt.

The Hon. JENNIFER GARDINER: Yes, more contempt. The Hon. Michael Costa is not alone in being in contempt of this House. Mr Scully and Mr Knowles are other classic examples.

Debate adjourned on motion by the Hon Dr Brian Pezzutti.

FAMILY IMPACT COMMISSION BILL

Second Reading

Debate called on, and adjourned on motion by the Hon. Peter Primrose.

BUSINESS OF THE HOUSE

Postponement of Business

Private Members' Business item No. 7 in the Order of Precedence postponed on motion by the Hon. John Jobling.

NATIONAL PARKS AND WILDLIFE AMENDMENT (LICENCES) BILL

Bill introduced and read a first time.

Second Reading

The Hon. RICHARD JONES [11.59 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the National Parks and Wildlife Amendment (Licences) Bill, which allows for strictly non-lethal licences to be issued in respect to fauna.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

KINCUMBER AND WOY WOY POLICING

The Hon. MICHAEL GALLACHER: My question without notice is to the Minister for Police. Has the Minister taken any action to ensure that the 12 probationary constables who commenced duties this week with Brisbane Waters local area command were assigned to either Kincumber or Woy Woy police stations, given that neither of these stations has permanently based general duties officers?

The Hon. MICHAEL COSTA: This matter is not determined by me as Minister, it is determined by operational police. I will not make any further comments about deployment of our probationary constables. It is up to the acting police commissioner and his staff to make those decisions. I am very concerned when I am asked questions about police station opening hours, particularly when they come from the Leader of the Opposition in this House. He has a tendency to mislead the public about the operating hours of police stations. The honourable member was in Newcastle recently with John Brogden, the Leader of the Opposition, making extraordinary claims about police station operating hours. The Leader of the Opposition had to apologise because he got it wrong. I would not take anything the Coalition says about policing matters as having any credibility. They are out to whip up the public on law and order issues. It is their one desperate attempt to try to win the next election. They have realised that they picked a dud as a leader. The results of a recent news poll show that the honeymoon period never occurred. The Coalition is desperate and is running bogus crime forums all over the State.

The Coalition was recently exposed for running a bogus crime forum in Burwood. It turned out that the people running the forum were fighting for Liberal Party preselection. Those bogus crime forums will be held all over the State. If they want to run a proper crime forum, they should invite the Minister for Police or the Attorney General. The Coalition invites Andrew Tink, the shadow Minister for Police. Why was the Leader of the Opposition in this House not made shadow police Minister? I have discovered the reason is because he gives his leader unreliable information. He was standing next to his leader in Newcastle telling him that Belmont, Charlestown, Toronto, Wallsend and Raymond Terrace police stations were closed. He was wrong. That night John Brogden said on NBN television, "I am sorry, I got my words mixed up between 'reopen' and 'restart'." They are absolutely pathetic.

The Coalition has picked a dud and they are worried, so they are trying to create mischief in the community by holding bogus crime forums. The Coalition made a mistake at Burwood because it has not selected its candidate for Burwood. Andrew Tink supports one candidate, Joe Tannous, and John Brogden supports the other candidate, Andrew Ho. The Liberal Party is split in two with the old guard supporting one candidate and the new guard, supposedly unified around John Brogden, supporting another. Lies, lies, lies.

The Hon. MICHAEL GALLACHER: I ask a supplementary question. Has the honourable member for Peats written to the Minister about assigning some of the new officers to the general duties police station at Woy Woy? If so, will he table the letter?

The Hon. MICHAEL COSTA: The honourable member for Peats writes to me often about a number of matters. I do not intend to reveal my correspondence with the honourable member for Peats to the House.

The Hon. Michael Gallacher: The answer is "no".

The Hon. MICHAEL COSTA: The answer is not "no". The answer is that I do not intend to reveal private correspondence between myself and the honourable member for Peats to this House. That is a reasonable position to take.

The Hon. Michael Gallacher: You are hiding it from the community.

The Hon. MICHAEL COSTA: The Leader of the Opposition bases his definition of community contact on holding bogus crime forums, which I find amazing. The local area commander who attended one of these bogus crime forums in Burwood told me that most of the people who attended were not even from the Burwood local area command.

The Hon. Michael Gallacher: Point of order: The supplementary question was specifically about Woy Woy police station and correspondence between the Minister and the honourable member for Peats. We have already heard about Burwood.

The PRESIDENT: Order! I remind the Minister for Police that the sessional order relating to questions without notice requires an answer to be relevant to the question asked.

The Hon. MICHAEL COSTA: I am always relevant in relation to these matters. Whenever the Coalition asks a question about crime I put the position. Desperate people are running campaigns in many areas to scare the community into believing that crime is out of control. They have been exposed. A forum was held at Burwood, and the Coalition tried to hold them at a number of other locations. I am sure they would try to run one in Woy Woy, but they should invite me to the next one. Rather than tell lies, the Coalition should invite me to go and talk to the community about what the Government is doing to resolve crime issues in this State.

GENDER WAGE EQUITY

The Hon. JAN BURNSWOODS: My question without notice is directed to the Special Minister of State, and Minister for Industrial Relations. Will the Minister inform the House of recent developments in redressing inequitable pay and employment conditions for women in the New South Wales workforce?

The Hon. JOHN DELLA BOSCA: I thank the Hon. Jan Burnswoods for her question and her ongoing interest in employment conditions of women. A decision by the Full Bench of the New South Wales Industrial Relations Commission in March was an affirmation of this Government's longstanding commitment to remove the gender gap between male and female pay. I refer to the gender equity decision involving public sector librarians and archivists. The outcome is the result of the New South Wales Industrial Relations Commission addressing the value of work in a non-discriminatory manner under the equal remuneration principle.

This new principle is evidence of the five-year Government strategy to address gender wage inequity in New South Wales. The establishment of the equal remuneration and other conditions principle completed the major recommendations of the New South Wales pay equity task force and the pay equity inquiry report. That gender inequity can exist in occupations where females dominate the work force was clearly established during that inquiry. This inequity can manifest itself in the form of lower wages than those of similarly qualified males in other occupations who have comparable skills and responsibilities.

The New South Wales Industrial Relations Act 1996 provides a framework for the fixing of fair and reasonable conditions of employment by an independent umpire. However, in doing so the New South Wales Industrial Relations Commission is not unfettered. By its own principle the commission must have regard to wage relativities to avoid the possibility of wage leapfrogging. More important, the commission is to consider the state of the economy, the effect on employers and the effect on employment in any given industry. The principle allows industrial parties to take cases to the Industrial Relations Commission when they believe that women's award wages do not reflect the true value of the work. As in the librarians' case, unions can ask the commission to reconsider award wages and conditions only when they can demonstrate undervaluation of work on a gender basis.

DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT AIRBUS INCENTIVES

The Hon. DUNCAN GAY: My question is to the Treasurer, and Minister for State Development. What specific incentives did the Department of State and Regional Development offer the Airbus company when it was looking to establish a major Australian operation? Is it a fact that the Queensland Government significantly outbid New South Wales in an effort to secure the Airbus operation in Brisbane by offering incentives worth more than 10 times those offered by the Department of State and Regional Development? Now that major aviation industries—including Airbus, Australian Airlines, Virgin Blue and Qantas maintenance—have all set up operations in Queensland, can the Minister explain what went wrong with efforts to get those companies established in New South Wales?

The Hon. MICHAEL EGAN: I certainly have never boasted that New South Wales offers companies which are seeking relocation more than any other State. In fact, I make the opposite boast. We want businesses to establish in New South Wales on good, sound, strong economic fundamentals. States that might behave like those maverick States in the south of the United States of America, which provide huge taxpayer funded incentives to businesses to set up in locations where they might not otherwise set up, are doing everyone in Australia a disservice and, indeed, a disservice to their own citizens and taxpayers.

New South Wales is very proud of its investment record. We consistently attract more investment than any other State in Australia. Occasionally we offer reasonable incentives and we do so when we think that there

is strategic value in gaining a company to Sydney or to New South Wales. However, I can say this: I would never make an offer of assistance to a company if I thought that was the determining factor in its decision to invest, because that simply means that in a year or two or three or four down the track it will be at the taxpayers' door again. We want companies to understand that locating here makes economic sense for them. The Deputy Leader of the Opposition mentioned a number of companies associated with the airline industry and I think he referred to Virgin. I do not want to embarrass my party colleague Mr Beattie or any of his colleagues, but the Queensland Government, by all reports, paid an absolute fortune to get the Virgin shingle in Queensland but New South Wales got the vast majority of the jobs.

PROTESTER ANONYMITY

Reverend the Hon. FRED NILE: I wish to ask the Minister of Police a question without notice. Is it a fact that during the recent M1 protest and recent pro-Palestinian protests in Sydney some participants wore face masks, balaclavas, et cetera to hide their identity from the authorities? Is it a fact that the more violent protesters, with the intent to cause damage or harm to police officers or to the United States of America or Israel consulates, had their faces covered to prevent identification by police photograph or video surveillance? What action is the Government taking to increase penalties for participants of protest marches or rallies who attempt to remain anonymous in order to further their political objectives through violence? Why were 31 violent M1 protesters arrested by the police and taken to the Police Centre where 30 protesters were released and only one protester was charged?

The Hon. MICHAEL COSTA: This is an important question. Many of the matters raised are operational, particularly those relating to police discretion about how people are dealt with once they are arrested. I am happy to obtain advice from the relevant operational commanders, if they are in a position to provide that, and I will provide the House with a response. As to the use of masks and balaclavas, again I will take advice from police whether they consider that is a problem, and I will provide the House with a response. As to the broader issue of the protest itself, it is important that we thank our front-line police officers for the tremendous efforts they made on that particular day.

As we all know one officer, Senior Constable Susan Lowe, was thrown from a horse because of the irresponsible action of a number of the demonstrators in the use of marbles and firecrackers to spook horses. Despite that provocation, the New South Wales police displayed great restraint. They handled the situation with professionalism. What could have been a very difficult situation involving both confrontation with demonstrators and public dislocation was handled in a very professional manner. I have already thanked the police involved and I take it that I can thank them on behalf of this House as well.

WONBOYN LAKE OYSTER INDUSTRY

The Hon. TONY KELLY: My question is to the Minister for Fisheries. What has been done to help growers following the large oyster kill in Wonboyn Lake on the far South Coast of New South Wales?

The Hon. EDDIE OBEID: I thank the Hon. Tony Kelly for his continued interest in issues in regional New South Wales. As the convener of Country Labor he has a particular interest to ensure that communities in the regions are well served. The New South Wales Government is actively supporting the development of our State's aquaculture industry. Sydney rock oysters continue to be the backbone of this industry. Recently far South Coast growers have had their livelihoods threatened by an unknown cause that is killing their oysters. The Government is working closely with Wonboyn Lake farmers.

This waterway is the State's most southerly oyster producing estuary. The 24 aquaculture leaseholders in this lake harvest \$300,000 worth of Sydney rock oysters a year. Since March these farmers have lost up to 90 per cent of their oysters. This has been devastating for this area on the far South Coast as it is likely to affect production for the next three years. New South Wales Government scientists are continuing to search for the cause of this devastating oyster kill. Indeed, New South Wales Fisheries Director of Aquaculture, Dr Nick Rayns, is visiting Wonboyn Lake today to meet with local oyster growers. Staff from the Department of State and Regional Development is also meeting with these growers.

Wonboyn Lake is currently closed to harvesting of oysters under section 8 of the Fisheries Management Act. I am pleased to advise the House that the New South Wales Government is offering further support to this local industry. After consulting with local growers the Government will waive fees and charges across all oyster leases in the lake. It will also not charge aquaculture permit fees for those farmers who only

operate in Wonboyn Lake. Affected Wonboyn Lake oyster farmers will not have to pay annual oyster fees and charges. This is a small contribution from the Government to help an industry that has been the backbone of aquaculture in this State. I will update the House about further developments in this area.

HAND GUN IMPORTATION

The Hon. DAVID OLDFIELD: My question is directed to the Minister for Police. Does the Minister recall giving an interview last month on radio station 2GB regarding armed robbery and the proliferation of hand guns in Sydney? Is the Minister aware of the unease caused by some of his comments? Does the Minister realise that he failed to differentiate between firearms obtained illegally and those obtained legally by honest, law-abiding citizens? Will the Minister please clarify that he was referring to illegal hand guns imported by criminals and that he did not intend this activity to be confused in any way with the legal importation of hand guns for legitimate purposes? In future will the Minister always make an extra effort to differentiate specifically between criminal hand gun activities and legitimate hand gun importation and possession by law-abiding enthusiasts and members of the firearms industry?

The Hon. MICHAEL COSTA: I do not remember that interview, but I said a number of things about armed robbery and those comments were made in that context. I make it clear that I do not intend in any of my comments to detract from the right of honest citizens to use legal firearms in a legal manner. That was certainly not my intention. I spoke in that interview about armed hold-ups, and it is true that weapons that were obtained legally sometimes end up in the hands of criminals and are used for illegal purposes. We must be careful in that regard. I have great respect for the law-abiding members of the gun-owning community and I have met a number of them. They have a legitimate right to own firearms and to use them lawfully in pursuit of their sport. Many of them are passionate about their sport. I have been invited to several firearms ranges, although I am not as passionate as they are about that sport.

The Hon. Michael Egan: It is a sport that I'm very good at, by the way.

The Hon. MICHAEL COSTA: Shooting people?

The Hon. John Della Bosca: No, clay pigeons.

The Hon. MICHAEL COSTA: I take on board the Hon. David Oldfield's comments and will bear them in mind in future public discourse about the use of firearms. No offence was intended to people who use their hand guns in the manner prescribed by the law.

FORMER COMMISSIONER OF POLICE EMPLOYMENT OFFERS

The Hon. PATRICIA FORSYTHE: My question is directed to the Minister for Police. Will the Minister inform the House of what preliminary or other job offers made to Peter Ryan he was aware of and when he was aware of them, given that his office was quoted in the *Australian* on 29 April as saying that he was "unaware of any final job offers made to Mr Ryan"?

The Hon. MICHAEL COSTA: I thought that this matter had been canvassed in the public arena—and certainly in this House yesterday—to a great extent. If Opposition members wish to waste question time revisiting this matter, who am I to argue? I will say this again so Opposition members understand it: I had absolutely no knowledge of any job offers made to Peter Ryan. The papers regarding his termination have been made public. I do not intend to say anything more on this matter.

INDUSTRIAL RELATIONS COMMISSION AWARD WAGE DECISION

The Hon. AMANDA FAZIO: Can the Special Minister of State, and Minister for Industrial Relations inform the House of the living wage case decision handed down by the Australian Industrial Relations Commission today?

The Hon. JOHN DELLA BOSCA: I am in a position to do that. The Australian Industrial Relations Commission today awarded an \$18 per week increase to all award rates—

The Hon. Michael Gallacher: Since Michael arrived, you're starting to look pretty good, John. You're looking better every day.

The Hon. Michael Egan: Point of order: Important questions are asked during question time and we are all entitled to hear the answers. The Leader of the Opposition has been behaving in an appalling manner today and I ask you to call him to order, Madam President. Otherwise the rest of us will not have the benefit of hearing the answers to important questions.

The PRESIDENT: Order! I remind honourable members who sit close to microphones in the House that any comments they make are more amplified than the comments of those who sit further away from the microphones. Although all interjections are disorderly, they are particularly disorderly when said directly into the microphones.

The Hon. JOHN DELLA BOSCA: The Australian Industrial Relations Commission awarded an \$18 per week increase to all award rates in Federal awards. This decision followed an application by the Australian Council of Trade Unions for an increase of \$25 in award rates, which the New South Wales Government supported. The commission also increased the minimum weekly rate of pay to \$431.40. The New South Wales Government believes this provides a real increase for workers in New South Wales who rely upon the safety net of award wages. The New South Wales Government will submit to the New South Wales commission in the upcoming State wage case that this increase be passed on without delay to all workers covered by New South Wales awards.

SANDON POINT RESIDENTIAL DEVELOPMENT

Ms LEE RHIANNON: I direct my question to Ms Carmel Tebbutt, representing the Minister for Energy. Is the Minister aware that Mr David Campbell, the member for Keira, received a letter from the Minister for Energy on 2 April concerning development at Sandon Point? It states, in part:

Sydney Water has advised me that it had always been aware of the cultural and heritage significance of sites within the boundaries of its land at Sandon Point. For this reason, Sydney Water ensured that appropriate safeguards were in place before, during and after the sale of this land ... special conditions in the Contract for Sale establish specific requirements on the purchaser in respect of aboriginal heritage.

Considering that this land is— [*Time expired.*]

The PRESIDENT: Would the Minister like to reply?

The Hon. CARMEL TEBBUTT: The best I can do is suggest that Ms Lee Rhiannon place her question on the notice paper so that I can refer it to the Minister for Energy in the other place.

Ms LEE RHIANNON: I ask a supplementary question. Considering that this land is about to be developed by the Stockland Trust Group and sites of Aboriginal heritage are to be bulldozed and built on, did the Minister mislead the community or was he just plain incompetent?

The Hon. Michael Egan: Point of order: There can be a supplementary question only when there is an initial question. The Hon. Lee Rhiannon took much of the credit for formulating the new sessional orders that were adopted by this House. She even boasted about them at a Greens conference in Canberra some months before their introduction in this place. Apparently her aim was to shut me up. She has been caught in her own mischief. She cannot ask a supplementary question when she did not ask a question in the first place.

The Hon. John Ryan: It doesn't matter; I think she did what she wanted to do.

The Hon. Michael Egan: It would be an absolute travesty if members could use the time allotted for asking their question and then the time allotted for a supplementary question to ask the one question. That would be a complete and utter travesty.

The Hon. John Ryan: Look at your fictional sessional orders.

The PRESIDENT: Order!

The Hon. Michael Egan: I like the sessional orders as they are and one day I will tell you why.

The PRESIDENT: Order! The sessional orders are very clear. A supplementary question may be asked to elucidate an answer. As the answer suggested that the original question be placed on the notice paper, I rule that the further question did not seek to elucidate an answer and is, therefore, out of order.

PRAWN WHITE SPOT VIRUS

The Hon. JENNIFER GARDINER: My question is to the Minister for Fisheries. Does the Minister recall that last year he caused great consternation in the State seafood industry and the nation's agricultural industry, especially among exporters, by saying that a batch of prawns from Sydney Harbour tested positive to the white spot syndrome virus. Is the Minister aware that a national survey with confirmatory testing at the CSIRO and at the Australian Animal Health Laboratory at Geelong has ruled out any false positive results and confirmed that white spot virus is not present in Australia and that the sole confirmed detections of white spot virus in Australia were in imported green prawns? Will the Minister now apologise to our exporters for damaging their reputations unnecessarily?

The Hon. EDDIE OBEID: This is an example of how the Opposition treats the Fisheries portfolio. The Opposition spokesperson on Fisheries tried to apologise on behalf of her Federal colleagues for their ineptitude with regard to the entry of species and diseased species into this country. We all have major concerns about firearms entering Australia in containers. We know that for every thousand containers that enter our ports only one is looked at by Customs. It is common knowledge that guns are entering our country over borders for which the Federal Government has responsibility. It cannot contain illegal imports. What is wrong with this Government telling the people who are responsible for fisheries federally that they should have a better regime to detect diseased products coming from other countries?

If before an election the Federal colleagues of the Hon. Jennifer Gardiner want to cover up a scientific dispute about the detection of disease in our fish species, that is a matter for them. The simple facts were we had the evidence.

The Hon. Jennifer Gardiner: You did not have the evidence. You made it up.

The Hon. EDDIE OBEID: We had the advice. If two laboratories, both of which are responsible to the Federal Government, come up with differing reports, that too is a matter for them. But the question is why is the Federal Government not spending more money to detect diseases in imported products, especially food products, that can destroy our natural resources? That was what the issue was about. Now if you expect me on behalf of this Government—

The Hon. Jennifer Gardiner: You should apologise.

The Hon. EDDIE OBEID: I know the Opposition lie. They lie plenty.

The Hon. Jennifer Gardiner: Point of order: I would call upon the Minister to withdraw the imputation that the Opposition lied. It is not true. If he is saying that I am lying, I assure him am not. I am referring to a report of the CSIRO that was released today on this very important issue, which affects the imported seafood industry and the agricultural industry in this State.

The Hon. Michael Egan: To the point of order: This really is very precious and thin skinned of the Opposition. In the last 24 hours in this place the Opposition has accused individual members of the Government of lying on so many occasions that you would not be able to count them. The House, if it wants, can interrupt the flow of the debate almost every second minute if individual members so wish. But members have to have reasonably thick skin. They should not be thin skinned, and I would suggest that the Hon. Jennifer Gardiner should look at some of the behaviour of her own colleagues over the last 24 hours before she takes the matter to the President.

The Hon. Duncan Gay: To the point of order: The Deputy Leader of the Opposition has taken offence and has asked the Minister to withdraw. He should withdraw. If the Minister believes that the Opposition has misled this House in any particular way, the Minister can use the forms of the House and move a substantive motion on the matter—as the Opposition did yesterday. The Minister for Mineral Resources has only two choices: either withdraw the remark or, if he does not withdraw, leave the House.

The Hon. EDDIE OBEID: I will repeat what I said: The Opposition has lied. I do not intend to withdraw.

The Hon. John Jobling: To the point of order: The Minister has now compounded the offence by referring to the Opposition generally, and every individual member of the Opposition is entitled to feel offended. I would ask that the Minister withdraw and not further compound the error.

The PRESIDENT: Order! I assume that members when speaking to the point of order were referring to Standing Order 81, which provides that personal reflections on members shall be deemed disorderly. In past rulings I have made it clear that with regard to this provision an individual member must feel that an imputation against him or her has been made. Rulings of former Presidents have made that point clear also. I refer in particular to a ruling of President Johnson, which states:

The statement "lies were being peddled about the countryside" does not constitute a personal reflection and is not out of order.

Accordingly, I rule that the statement of the Minister was not a personal reflection on an individual member of the Opposition and, therefore, was not disorderly.

TARONGA ZOO AND WESTERN PLAINS ZOO FUNDING

The Hon. IAN MACDONALD: My question without notice is addressed to the Treasurer, and Minister for State Development. Can the Treasurer provide the House with the details of the Government's plan for Sydney's Taronga Zoo?

The Hon. MICHAEL EGAN: Last month the Government began a 12-year rebuilding and renewal program for Taronga and Western Plains zoos. The cost of the project will be some \$225 million over 12 years.

The Hon. Jennifer Gardiner: That's where you should go.

The Hon. MICHAEL EGAN: The Hon. Jennifer Gardiner should go to both zoos too. If she has not been to them recently, she will find that they really are first class. These are great zoos but they are about to be even greater with world-class conservation, education, care and presentation of wildlife. The program of rebuilding the zoos is the most comprehensive since Taronga opened in 1916 and Western Plains—

[Interruption]

The Hon. Dr Brian Pezzutti is one of the few people I know who does not have to lie to sleep. He sits and sleeps. I am amazed he is awake now. The program of rebuilding the zoos is the most comprehensive since Taronga opened in 1916 and Western Plains Zoo in 1977. Work has begun on the first of three new super exhibits at Taronga Zoo. It is the \$11 million, two-hectare Backyard to Bush display showing the links between this continent's unique wildlife and Australian's living in the city, rural environments and the bush. Members of the House who come from country areas would be especially interested in that exhibit. Within five years the major reworking of Taronga will transform almost half the zoo, with two new super exhibits: the Asian elephant rainforest and the Australian coast.

The Hon. Dr Brian Pezzutti: Have you been to the zoo lately?

The Hon. MICHAEL EGAN: Yes.

The Hon. Dr Brian Pezzutti: When?

The Hon. MICHAEL EGAN: I was there about a month ago, about five weeks ago and about six weeks ago. I have been there three times this year. There will also be a new, centralised restaurant and commercial plaza and a people-mover system. The Government funds are not just limited to Sydney's Taronga Zoo; the Central West region stands to benefit as well. The Central West, of course, is a great place to visit generally—

The Hon. Tony Kelly: It is an even greater place to live.

The Hon. MICHAEL EGAN: Yes, but many visitors to the region go specifically to Dubbo to see the wildlife at the Western Plains Zoo. At that zoo \$35 million will be spent on features including a safari drive-through exhibit, tours of the 200-hectare flora and fauna sanctuary and an entire new rhino range display. This will feature Australia's first great one-horned rhinoceros, and its associated breeding program. For every dollar raised by the Zoological Parks Board and the Taronga Foundation the New South Wales Government will contribute \$3. The foundation is out to raise \$56 million from corporations and individuals. I am pleased to say that more than \$5 million has already been received in donations, sponsorships and pledges. Few world zoos have been given such a comprehensive opportunity to upgrade their resources and to involve the community in their crucial aim: the preservation of wildlife.

The PRESIDENT: Order! For the guidance of members in future debate I would like to add to my previous ruling when I referred to a ruling of President Johnson, which states "The word 'lie' is not offensive when used in general terms and not in reference to a specific person. When such an allegation is made against a specific person the remark should be withdrawn."

KU-RING-GAI ELECTORATE BUILDING DEVELOPMENTS

The Hon. HELEN SHAM-HO: My question is directed to the Special Minister of State, representing the Minister for Planning. Is it a fact that a meeting has still to be scheduled between Planning New South Wales and staff from Ku-ring-gai Council to discuss the issue of State environmental planning policy 5 [SEPP 5] developments in the bushfire hazard areas in Ku-ring-gai, despite a commitment given by the Minister for Planning two months ago to Ku-ring-gai Council? Given that many areas of Ku-ring-gai are isolated by bushland and have limited access, and that the local emergency committee refuses to state that it can safely evacuate the area in a bushfire or emergency, why has the Minister not facilitated this meeting between Planning New South Wales and the council? Will the Minister inform the House how the Government can ensure that SEPP 5 development in bushfire hazard areas such as those in the Ku-ring-gai Council area will not put at risk the safety of the most vulnerable members of our community, the aged and disabled? [*Time expired.*]

The Hon. JOHN DELLA BOSCA: The question deals with specific matters within the administration of the portfolio of the Deputy Premier. He will provide an adequate answer for the honourable member and the House at his earliest convenience.

FORMER COMMISSIONER OF POLICE END OF CONTRACT PAYMENT

The Hon. GREG PEARCE: Did the Minister for Police inform the House yesterday in relation to his arrangements to pay Peter Ryan \$455,000 that "there is no other correspondence" and "I tabled every single document" relating to this matter? However, in his letter to the Police Integrity Commission [PIC] on 10 April 2002 he indicated that there was further communication with Mr Ryan's lawyers. Was that communication in writing? If not, what communications took place between the Government and Mr Ryan or his representatives? Were any diary notes, internal memos, reports, letters or emails produced? Will the Minister now table all such communications and documents?

The Hon. MICHAEL COSTA: I always enjoy answering Dennis Denuto's questions.

The Hon. Michael Egan: No wonder Freehills got rid of him.

The Hon. MICHAEL COSTA: Did Freehills get rid of him? I was told that he was in the lower traffic court. I have already made statements on this matter. I do not intend to make any further statements. All the documents that were relevant and in my possession I tabled.

The Hon. GREG PEARCE: I ask a supplementary question. My question was whether there were diary notes, internal memos, reports, letters or emails produced and whether the Minister has written to the PIC clarifying his misleading letter of 10 April 2002 regarding Mr Ryan's departure and his role in it.

The Hon. Ian Macdonald: Point of order: According to your earlier ruling the question is not a supplementary question and therefore is out of order.

The PRESIDENT: Order! Supplementary questions must seek to elucidate an answer. I rule the question in order and the Minister may answer it.

The Hon. MICHAEL COSTA: I stand by the answer I have already given. All the documents in my possession have been tabled in this House. All the relevant documents that relate to this matter have been tabled in this House.

INDUSTRIAL RELATIONS

The Hon. JOHN HATZISTERGOS: Will the Minister for Industrial Relations inform the House how the New South Wales industrial relations system remains relevant to employees in this State?

The Hon. JOHN DELLA BOSCA: I commend the honourable member for his ongoing interest in industrial affairs and in particular the jurisdiction of industrial relations in New South Wales. The New South Wales industrial relations system continues to provide fair and equitable working conditions for all employees in this State. In contrast, workers have endured a sustained attack by the Federal Government. The ideological motivation of Peter Reith has been carried on by his successor, Tony Abbott—

The Hon. Charlie Lynn: A good man.

The Hon. JOHN DELLA BOSCA: A good man who has fallen into the wrong company. As recently as today he has continued to call for a single industrial relations system provided by an extension of the Corporations Law. A recent survey undertaken by the Australian Centre for Industrial Relations Research and Training shows that the New South Wales common rule award system covers over 1.2 million workers. Only 1 per cent of New South Wales employees are under the yoke of the Federal Government's individual contracts or Australian workplace agreements, AWAs. New South Wales awards protect some of the most vulnerable workers in the work force, with 54 per cent of employees who are women, 34 per cent who are part-time workers and 57 per cent of workers in regional and rural New South Wales being covered by State awards.

Tony Abbott is seeking that New South Wales awards be stripped back to the meagre provisions of allowable award matters that apply to Federal awards. Casuals currently enjoying the benefits of parental leave enshrined in legislation would have them removed. The collective and orderly framework of industrial relations in New South Wales would also be removed. I am advised that Tony Abbott has praised the dispute resolving powers of the Federal system. This motivates me to think that this is a sick joke. What workers or businesses would want a repeat of the farcical and painful Maritime Union of Australia dispute, or the dispute in the coal industry under the Federal jurisdiction. Who would want the reintroduction of the social effects of a lockout being used as a mechanism of resolving industrial issues, depriving people of the capacity to earn their living for months if not years?

In some disputes under the Federal jurisdiction workers have been locked out from weeks to months and production has ground to a halt. This contrasts with the situation in New South Wales, where an effective industrial relations commission has real power to manage industrial disputes. The current BHP steel industry dispute in the Illawarra overseen by the commission has been an example of this. Submissions to the five-year review of the Industrial Relations Act 1996 do not call for massive change, in spite of the fact that all industrial parties, including large and small business, have had an opportunity to express their views. What we still need to know is: Has the Leader of the Opposition in this place committed to handing over the State industrial relations system to Tony Abbott?

The Hon. Michael Gallacher: Well, mate, I will answer that next year when I am in your spot.

The Hon. JOHN DELLA BOSCA: So you are not going to tell people before the election—you will wait until after the election? That is very interesting. That may be brought up again in this House and in the other place. The Leader of the Opposition does not intend to tell the people of this State what his approach to industrial relations is until after the next election. Will he state on the record in this Parliament his party's intentions for New South Wales workers and businesses? I think he has no policy. He said that it is on the record, but I have not seen it anywhere. Will he hand the harmonious New South Wales system back to those who reintroduced the lockouts as a means of managing disputes, those who gave us month-long stoppages, Doberman dogs and people in balaclavas as a means of resolving industrial disputes?

REFUGEE INTAKE

The Hon. Dr PETER WONG: My question is directed to the Treasurer, representing the Premier, and Minister for Citizenship. Yesterday the Hon. Steve Bracks, Victoria's Premier, called for more refugee places in Australia's immigration program. Will the Premier demonstrate New South Wales' support for refugees and human rights by immediately joining his Labor Victorian counterpart in calling on the Federal Government to increase Australia's refugee intake?

The Hon. MICHAEL EGAN: I will refer the question to the Premier for his response.

WORKCOVER WORKERS COMPENSATION SEMINAR

The Hon. RICK COLLESS: My question is to the Minister for Industrial Relations. Is the Minister aware that a proposed 29 May WorkCover seminar at Griffith on workers compensation reforms for rural general practitioners in the Riverina area, was cancelled after WorkCover expected the local Division of General Practice to organise and fully fund the event? Has the Minister been informed that the affected rural general practitioners are now being invited to attend, at their own expense, a similar seminar at Wagga Wagga requiring a six-hour return journey for many and leaving the local communities with no doctor? What action has the Minister taken to ensure that the Murrumbidgee Division of General Practice will be provided with local training on workers compensation reforms by WorkCover?

The Hon. JOHN DELLA BOSCA: That is a very good question. At this stage I have not taken any action concerning the Murrumbidgee Division of General Practice, but I will. I intend to pursue that matter with a great deal of vigour. I will respond to the honourable member as soon as practicable. In general terms, it is important to place on the record that WorkCover has a degree of commitment to work with general practitioners and all the medical profession in respect of injury management. There has been extensive consultation.

The Hon. Dr Brian Pezzutti: You need to consult. The first form was wrong.

The Hon. JOHN DELLA BOSCA: As the Hon. Dr Brian Pezzutti knows there has been extensive consultation across general practice and various specialities in order to produce a fairer and more efficient system of managing injuries, getting people back to work and ensuring that there is adequate treatment for people with occupational health and safety injuries and illnesses. I take the member's question very seriously. He referred specifically to the management of that co-operation. Obviously, WorkCover is not made of money and the costs of some training programs need to be shared. I will obtain answers to the specific issues he raised and respond as quickly as possible.

YOUTH JUSTICE CONFERENCING

The Hon. RON DYER: My question without notice is to the Minister for Juvenile Justice. Will the Minister provide the House with information regarding the effectiveness of youth justice conferencing?

The Hon. CARMEL TEBBUTT: I know that the Hon. Ron Dyer takes as much interest, and as much pleasure, as I do in the results that I am about to share with honourable members. The Carr Government introduced youth justice conferencing in April 1998 as part of a hierarchy of responses under the Young Offenders Act. Conferencing diverts young people from the court system. On many occasions in this House I have spoken about how the system works and I know that honourable members are familiar with that. Youth conferencing saves court time and money but, most importantly, it is effective. Conferencing is a tough, often harrowing, process for a young offender.

Under supervision, young offenders meet their victims face to face. They are required to confront the consequences of their crimes and come up with an outcome plan to make reparation for their actions. Often it is not an easy task for young persons to come face to face with the victims of the crime and realise the impact of their actions, nor should it be. Quite clearly they have offended against the community and they need to take responsibility for that. I am pleased to report to the House that the results of the New South Wales Bureau of Crime Statistics and Research [BOCSAR] report released yesterday confirm that the youth justice conferencing scheme is reducing reoffending significantly.

The report shows that conferencing lowers the reoffending rate for first-time offenders by up to 28 per cent, as opposed to those who went to court. The report also found that the number of reappearances in court was about 24 per cent lower among those who had originally been referred to conferencing than among those who had originally been dealt with by the Children's Court. The BOCSAR made a special point of examining the effects of conferencing on Aboriginal offending. The results revealed that Aboriginal juveniles are less likely to reoffend if brought before a conference than if brought before the Children's Court. That is significantly good news.

The Government has always felt that the youth justice conferencing scheme was effective. An earlier report by the BOCSAR stated that the majority of victims said that they found it a more satisfactory process for themselves. It is good news that the report found that conferencing reduces recidivism amongst young offenders. The effectiveness of conferencing is not limited to property crime. Although conferencing reduced the likelihood of reoffending for both property and violent crime, the beneficial effects were greater for violent crime than for property crime. That is a significant result, given that more than 5,540 young people have been through conferencing since the scheme was introduced in 1998.

Throughout New South Wales there are now more than 650 conference conveners with a strong emphasis on rural and regional areas. Conferencing has, on a number of occasions, been criticised as a soft option. The report by the bureau put to rest that notion once and for all. The report clearly shows that conferencing is not a soft option but an effective option. The success of conferencing means the very large number of victims are feeling the satisfaction of telling an offender what the impact of the crime was. They also have a direct say in how the young offender should make reparation. Conferencing is not a training exercise, but it does make a young person take responsibility for the harm done and is the first step towards reconciling the

young person with the community. And, of course, the success of conferencing must be of great benefit to the community. As for personal testimonies to the effectiveness of conferencing, I can do no better than to quote the words of Mr Mark Kearns, a former police officer of 17 years service, who said that he was initially opposed to the idea of a conference after his son was assaulted. He said:

I wanted the person who assaulted my son locked up. The police suggested conferencing. I thought this was pandering to the offender and I didn't want him to escape facing his responsibilities. We went to conferencing and found it was very confrontational for all parties involved. The truly great thing about it was that it helped my family see that the offender truly regretted what he did. It also helped us deal with our anger.

[Time expired.]

HIH INSURANCE AND LAWCOVER PTY LTD

The Hon. PETER BREEN: My question is to the Treasurer, representing the Attorney General. Can the Attorney inform the House what steps have been taken to investigate the relationship between HIH Insurance Company and past directors of the Law Society's professional indemnity insurance company, LawCover Pty Ltd?

The Hon. MICHAEL EGAN: I am not at all familiar with the matter raised by the Hon. Peter Breen, but I will refer it to the Attorney General for his advice.

OBERON TO GOULBURN ROAD

The Hon. DUNCAN GAY: My question is to the Treasurer. Is the Treasurer aware of a meeting to be held this Saturday in Oberon to lobby the local member to honour the Labor election promise of funding to seal the Oberon to Goulburn road, a road which the Labor Party, through the current President of the Legislative Council and the former Minister for Transport, promised to seal in the lead-up to the 1995 State election? Can the Treasurer give an indication to the House and to the Oberon meeting what happened to that promise and when the Government intends to deliver on that commitment to the people of Oberon and the Bathurst electorate?

The Hon. MICHAEL EGAN: I will refer the question to my colleague the Minister for Roads for his response.

POLICE UNIFORMS

The Hon. IAN WEST: My question without notice is to the Minister for Police. What is the latest information on New South Wales police uniforms?

The Hon. MICHAEL COSTA: I thank the honourable member for his question—

The Hon. Michael Egan: Is it going to cost me more money?

The Hon. MICHAEL COSTA: No, it will not cost more money, but it is important. One of my priorities as Minister for Police has been to take advice from police about what will make their job easier.

The Hon. Jennifer Gardiner: They want a new police Minister. They want you to go away.

The Hon. MICHAEL COSTA: One of the issues they have raised is their police uniforms. They really do not want them.

The Hon. Michael Egan: They love him.

The Hon. MICHAEL COSTA: They love me! That is where the Opposition has made a big mistake. If it is a choice between me and Andrew Tink, I know who they will pick. The police have indicated to me that they would like to trial a new uniform. The Government has agreed with police management that there ought to be a trial, and we will provide funding out of the existing budget to facilitate that trial. This month a trial of modified police uniforms will begin.

The Hon. Greg Pearce: Surely it is not operational. Why can't they do it themselves?

The Hon. MICHAEL COSTA: There are implications in terms of occupational health.

The Hon. Greg Pearce: You are interfering again. You are interfering in what they wear.

The Hon. MICHAEL COSTA: Calm down! He will get the buyback one day, then maybe Freehill's will take him back to run those traffic court cases for which he has a reputation across the legal profession as being an expert. The lower traffic court! As I was saying, we have decided to go ahead with the trial.

The PRESIDENT: Order! I call the Hon. Jennifer Gardiner to order. I call the Hon. Michael Gallagher to order. I call the Hon. Jennifer Gardiner to order for the second time.

[Interruption]

The Hon. MICHAEL COSTA: In response to the interjection by the Hon. Dr Brian Pezzutti, the design came from front-line police. They brought the issue to the attention of police management, and there was an agreement to go ahead with the trial. Some 500 officers in six local area commands are currently being issued with navy-coloured drill pants with side pockets, military-style boots and navy-coloured baseball caps. The six local area commands are Bankstown, Lake Illawarra, Kings Cross, Mount Druitt, Campsie and Tuggerah Lakes.

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

The Hon. MICHAEL COSTA: These uniforms will be trialled over a six-month period. There will also be a three-month trial of Cordura belts, which are more lightweight than the current leather belts.

The Hon. Michael Egan: The police spoke to me about that.

The Hon. MICHAEL COSTA: Yes, I know that. They spoke to the Treasurer at Evans Head. The police tell me that Cordura belts are more flexible and lighter than the existing leather belts.

The PRESIDENT: Order! I call the Hon. Greg Pearce to order.

The Hon. MICHAEL COSTA: They are made from a type of synthetic seat-belt material. The trial will allow operational police to compare both types of belt for comfort. In addition, many of female police officers have told me they would like the Cordura belts because they are much more flexible than the existing leather belts, and better from an occupational health and safety point of view.

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

The Hon. MICHAEL COSTA: Ned Flanders is away! Poor old Ned Flanders! Golly, golly! PolarTec cold-weather jackets will also be trialled. Police have indicated that these jackets may be more appropriate than the current cold-weather attire. We have certainly agreed to go ahead with that trial. The design of the current leather jacket is also under review. Police want an alternative leather jacket with a much more flexible design. The Police Association has been involved in the discussion. I would like to thank Constable Rod Rankin and Senior Constable Helen Taylor, who were involved yesterday in modelling the new uniforms for the public. It is an important step in providing proper and appropriate clothing for the New South Wales police force.
[Time expired.]

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

Questions without notice concluded.

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

NATIONAL PARKS AND WILDLIFE AMENDMENT (LICENCES) BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. RICHARD JONES [2.30 p.m.]: I am pleased to introduce the National Parks and Wildlife Amendment (Licences) Bill. The bill allows for strictly non-lethal licences to be issued in respect of fauna and is

designed to better preserve our native wildlife populations without obstructing farmers' ability to carry out their business. This provision will be in addition to the existing provisions in sections 120 and 121 for licences to be issued to harm fauna lethally. The bill has been developed in accordance with the recommendations of the RSPCA, the Humane Society International [HSI], the peak environment groups of New South Wales, the World League for the Protection of Animals, the Wildlife Information and Rescue Service [WIRES], Animal-Liberation and wildlife research scientists.

The bill contains two simple amendments: provisions for a non-lethal type of general licence and occupiers licence; and requirements that all licences issued under those sections be kept on a central register available for public inspection. The National Parks and Wildlife Act 1974 currently provides for the issuing of an occupiers licence under section 121, which authorises an owner or occupier of specified lands to harm—that is, to hunt, shoot, poison, net, snare, spear, pursue, capture, trap, injure or kill—a specified number of fauna found on those lands. Section 120 of the Act permits protected fauna to be harmed.

New subsection (1) is inserted into section 121. It creates another type of occupiers licence under which owners or occupiers of specified lands are authorised to remove or chase away fauna of a specified class found on those lands, but the licence holder will not be permitted to injure or kill the fauna. New subsection (1) inserts mirror amendments into section 120 to create another type of general licence which authorises the holder of the licence to remove or chase away protected fauna without injuring or killing the protected fauna. These provisions will allow the National Parks and Wildlife Service [NPWS] to issue licences that are strictly non-lethal, as well as lethal licences. Changes are necessary as currently the Act does not provide for strictly non-lethal options in respect of mitigation of commercial crop damage. Sections 120 and 121 licences are licences to kill and they have been issued to kill thousands of vulnerable flying foxes, and many other species of fauna.

With regards to flying foxes, there are three species in New South Wales: the black flying fox, the little red flying fox and the grey-headed flying fox. The black flying fox and the grey-headed flying fox are both listed as a "vulnerable" under the Threatened Species Conservation Act 1995. In addition, the grey-headed flying fox is listed federally under the Environment Protection and Biodiversity Conservation Act. Legal harm to flying foxes may occur only where a licence has been issued by the National Parks and Wildlife Service under sections 120 or 121. However, governments—both State and Federal—clearly recognise the need to change these policies.

In 1999 Environment Australia published "The Action Plan for Australian Bats". It identified the need to develop non-lethal techniques to protect fruit crops from flying foxes that should be developed and implemented in conjunction with the fruit growing industry. Similarly, the National Parks and Wildlife Service policy of flying fox mitigation of commercial crop damage for the 2000-2001 fruit-growing season states:

The NPWS advocates the use of exclusion netting as the only reliable means to avoid crop damage by flying foxes. However, it is understood that netting is not always feasible for all farmers and the NPWS Policy includes provisions for licences to be issued under s121 of the NPW Act to harm a limited number of Grey-headed and Little Red Flying fox by gunshot only. Licences have been issued with the proviso that farmers are to shoot to scare and it is accepted that this practice will lead to some direct and/or indirect mortality.

The Minister for the Environment advised me in correspondence of 24 September 2001 that the National Parks and Wildlife Service is revising this policy, stating:

The NPWS will continue to encourage orchardists to "shoot to scare" wherever practicable, or to net their crops to protect them from damage.

The NPWS interim policy will be in place for three years during which it is expected that farmers will take all reasonable means to adopt non-lethal alternatives.

The Minister is "encouraging" orchardists not to kill flying foxes. This is all that can be done at present as the Act does not codify the National Parks and Wildlife Service policy to adopt strictly non-lethal alternatives. The process that allows for both lethal and non-lethal measures to be undertaken in order to avoid crop damage by flying foxes is maintained under this bill. I am not removing orchardists' and other farmers' rights to kill flying foxes and other species of fauna for which they may obtain a licence. This bill simply allows for the introduction of strictly non-lethal alternatives. The National Parks and Wildlife Service already clearly advocates this in its policies and acknowledges that amendments are required. When, in May 2001, the New South Wales Scientific Committee made a final determination to list the grey-headed flying fox as a vulnerable species, it responded:

This has several management implications for NPWS, namely the current policy is no longer appropriate for the Grey-headed Flying fox.

Upon enactment, contravention of a non-lethal licence as contained in this bill will bring with it the penalty provisions as outlined in section 98 of the Act, which already exists. This means that if a person is issued with a licence under sections 120 or 121 not to injure or kill the fauna and it does so, a maximum penalty of 30 penalty

units or six months imprisonment or both for harming protected fauna under section 98 is applicable. The salient difference between the measures I am introducing and the current National Parks and Wildlife Service policy under which orchardists are "encouraged" not to kill flying foxes is in relation to the penalty provisions.

It is imperative for the conservation of the species that there are penalties for inappropriate and unwarranted killing. Threatened species information distributed by the National Parks and Wildlife Service in relation to the management of grey-headed flying foxes recommends implementing strict enforcement of licence conditions and taking appropriate action against unlicensed shooting. It is clear that this bill codifies this management recommendation. The National Parks and Wildlife Service states that the actual counts of the number of flying foxes killed and estimates of flying foxes harmed and crops damaged are at best minimum because not all return information requested of farmers is supplied either on their original application or on the flying fox record sheet [FFRS].

The National Parks and Wildlife Service concluded from its data that only a small proportion of fruit growers suffered significant damage from flying foxes statewide during 2000-01. This is because either a low percentage of orchards are affected each year, or not all farmers seek licences for flying fox damage mitigation. The National Parks and Wildlife Service acknowledges that research has indicated that in the past a number of farmers have operated outside the licensing system and this has resulted in a likely high, yet unquantifiable, annual mortality of flying foxes on fruit crops. New sections 120 (7), 120 (8), 121 (4) and 121 (5) require that all licences issued under sections 120 and 121 must be kept by the National Parks and Wildlife Service on a central register that is available for inspection by the public at no cost. Similar provisions are contained in Acts such as the Threatened Species Conservation Act. Implementing a publicly available central register of licence offers full transparency of horticultural practices, which will assist scientific research into all species, particularly vulnerable species.

In 1999 the Humane Society International [HSI] took legal action against the National Parks and Wildlife Service in the Administrative Decisions Tribunal [ADT] and won. The HSI considered that licensed culling was a threat to the survival of flying fox populations and that the National Parks and Wildlife Service was not adequately assessing or monitoring the impact of licensed culling activities. In particular, there were concerns that since many fruit growers cannot identify the species of flying fox that were being shot at night it would be impossible in some locations to ensure that the flying fox listed under the Threatened Species Conservation Act 1995, which are not included on the licence, are not accidentally culled.

The HSI requested that the tribunal provide it with access, under the Freedom of Information Act 1989, to the names and addresses of persons licensed by National Parks and Wildlife Service to harm flying foxes for the purposes of conducting research on them. This is the same kind of information I am requesting to be made public in this bill. In the process of its application, the HSI became aware of how decentralised and poorly administered this licensing process was. It became evident that a central register was absolutely essential because the current very decentralised and manual system of licence issuing makes it difficult to assess the impacts of this process on native wildlife populations and communities, and the accountability and transparency of administration of the Act is compromised by a lack of centralised reporting and assessment of the licence-issuing processes.

Without the access to locations, the HSI claimed that it would never have been able to link the applications for licences with the issued licence. The applications were not numbered or registered in any way and most had no notations to indicate whether they were successful and whether a licence was issued or an application was unsuccessful and was declined. The issued licences varied in terms of conditions attached by different officers and there was no stated sequential numbering system. When the HSI received the information for the period requested, there did not even appear to be any system to ensure that every licence that had been issued within the request period was in fact released to the HSI.

The National Parks and Wildlife Service had opposed public access to this information and was defeated. The ADT found that this kind of information was not unlike similar information available upon request or on a public register for threatened species. Clearly, this type of information has ongoing relevancy, particularly as two of the three species of flying foxes are listed now as vulnerable. The HSI did not intend to mount a public environment campaign against individual licence holders or approach individual licence holders in relation to their individual activities, nor is that the intention of my proposed amendments. Clearly, this information will ensure that accountability and transparency of licensing processes is enhanced. It ensures that groups with an interest in particular locations or species can undertake information-gathering exercises to assess any possible adverse impacts. In addition, scientific inquiry would be assisted by providing information in an accessible, timely and economic format.

The ADT was satisfied that the expressed fears, suspicions and concerns of the National Parks and Wildlife Service, the New South Wales Farmers Association, and other licence holders that the HSI would turn up at their properties and mount a campaign were unfounded. That did not happen. Quite simply, the ADT determined that in 1999 farmers had no reason to fear the information being made public. Similarly, they have no reason to fear this bill. The ADT found that: the information is licence information in respect of a matter of public regulation of protected New South Wales fauna and it is an offence to kill protected fauna; the applicant was not just curious or seeking to profit from the information; and public release of such or similar government information is not unprecedented. This Parliament has recognised that at least in relation to threatened species, a public register must be set up containing relevant licence information. The information in the present case is not unlike that information.

Freedom of information [FOI] applications have also been lodged in which applicants have been prepared to accept information with only postcodes to provide location information. However, it is clear that the preference of the HSI, and of all other animal, environmental and conservation groups I have liaised with, is that a public register of each licence in force be available. Licences are issued for a variety of reasons and species, and there is limited accountability of this function to government or the public. A centralised register would allow all applications and licences to be tracked. It would be in line with government policy on the use of technology to assist government in servicing the public. Assessment of impacts on species would have a starting point as information could be regularly reported from the database relating to how many, which, and why species were being killed or harmed.

Presently, to get information about issued licences requires a manual search of each officer's licence-issuing records, and thus an FOI application is made very expensive and time consuming. Thus in this bill new sections 120 (7), 120 (8), 121 (4) and 121 (5) are congruent with the 1999 verdict of the Administrative Decisions Tribunal, the provisions contained in the Threatened Species Conservation Act 1995, and the recommendations and requests of peak animal and environmental organisations. The National Parks and Wildlife Service has acknowledged that the impact of lethal harm for fruit crop damage mitigation purposes on the abundance of grey-headed, black, and little red flying foxes is unknown. For the 2000-2001 fruit-growing season, compliance with the condition that farmers return a flying fox record sheet was 67 per cent. The items most likely not to be included were animal gender and species, and number of flying foxes in the crop per night. It is quite clear that not enough research is being done.

In October last year the Federal Court of Australia ruled that the killing of hundreds of flying foxes per night had a significant impact on World Heritage listed rainforest and that fruit farmers electrocuting flying foxes had breached the Federal Environment Protection and Biodiversity Conservation Act. Quite aside from concern about the possible extinction of certain species of flying foxes, we must consider the probable impact on regeneration of Australia's hardwood forests. A large proportion of the country's most ecologically and economically important trees rely heavily on flying foxes for pollination or seed dispersal. Without the large populations required to propagate forests, whole ecosystems could suffer with potentially serious consequences for other wildlife, as well as humans.

Numbers of flying foxes have plummeted due to habitat loss, shooting, disease and lead pollution. Flying foxes are thus tending to rely more on orchards or urban habitats as their natural habitats have been lost. The New South Wales Scientific Committee, on handing down its determination to list the grey-headed flying fox as a vulnerable species, stated that it was of the opinion that the species is likely to become endangered unless the circumstances and factors threatening its survival or evolutionary development cease to operate. The committee noted that the species is at risk from uncontrolled culling activities such as shooting. Scientists Greg Richards and Leslie S. Hall have each studied bats for more than 30 years and report that:

Every scientist who has studied flying foxes in Australia has reported declining numbers, dating back to 1932. That was when Dr. Francis Ratcliffe, a distinguished British biologist, estimated that the grey-headed flying fox (*Pteropus poliocephalus*) already had declined by 50 percent since European settlement 140 years earlier.

Their report notes that lowland native forests continue to shrink and are rapidly being replaced by housing developments and orchards. For example, more than 70 per cent of the melaleuca swamps, a critical food source for flying foxes, has diminished significantly in just the last 20 years. Furthermore, habitat disruption by humans appears to have given black flying foxes a competitive advantage that has further displaced grey-headed flying foxes, forcing them southward into areas of even greater conflict with humans. It is clear that these conflicts threaten the very existence of the species.

In New South Wales alone there are about 1,500 orchards growing fruits attractive to flying foxes. Survey results indicate an average of 30 flying foxes shot per night in many of these orchards during problem periods, which can last for several weeks. Estimates run as high as 100,000 annually over the bats' range, not counting the young that die orphaned. The truth is that killing is simply not necessary in every situation. Flying foxes and waterfowl may be repelled by exclusion netting, agricultural practices such as land preparation, time and method of sowing, visual deterrents such as scarecrows and flashing lights, auditory deterrents such as shooting blanks, and any mechanical noise-making device placed in a field such as recorded distress calls.

Full exclusion netting is recommended by New South Wales Agriculture and the National Parks and Wildlife Service because netting prevents significant damage caused by birds and hail storms and precludes the need to kill. The New South Wales Rural Assistance Authority administers the scheme, which allows growers to take out low-interest loans for netting to prevent crop damage from flying foxes. In terms of cost and effectiveness, the CSIRO sustainable ecosystems compared the various management options for medium to small waterbirds and found exclusion netting rates to be high in effectiveness and very high in cost; visual deterrents and auditory deterrents, medium in effectiveness and low in cost; and agronomic practice and decoy crops, medium in effectiveness and medium in cost.

None of the abovementioned has an impact of population viability. Shooting was recognised by the CSIRO as only rating medium in effectiveness and medium in cost. It was the only method with a negative impact on population viability. The National Parks and Wildlife Service analysis of the problem of ducks on rice in New South Wales found that on the rice fields, shooting is a very ineffective method of population management. It found that shooting as a scaring tool is more effective. Its analysis was that ducks, when scared from rice crops, need a safe area to move to where they can rest and feed undisturbed. If they can be repeatedly scared from rice to a decoy area then this area will become extremely attractive and the problem may be contained.

The report concludes that shooting to scare in a planned manner, disturbing and varying other scaring devices, and providing areas in the form of decoy crops or local swamps and creeks that remain undisturbed for ducks to take refuge would be the best solution available. Auditory deterrents also have had a high level of proven success in stone fruit orchards, where systems exclude flying foxes at night and birds during the day. A successful independent trial conducted by the National Parks and Wildlife Service of the phoenix bat Wailer system in a nashi pear crop concluded that it excluded wallabies from the crop, as well as birds and bats. It is possible to generate many different sounds such as predator calls, shotgun blasts and distress calls.

The failure of shooting to kill is plainly evident. It devastates the population, it is extremely labour intensive, and when unsuccessful the bats simply move to another part of the orchard. As there are viable alternatives to killing, such as netting or deterrents, the National Parks and Wildlife Service quite clearly need not only be issuing licences with the authority to kill. As outlined earlier, this bill has the support of and has been developed in accordance with the RSPCA, the Humane Society International, the Environment Liaison Office, the World League for the Protection of Animals, the Wildlife Information and Rescue Service [WIRES], Animal-Liberation, and wildlife research scientists. I would like to individually cite their comments for the House. The RSPCA stated:

The Society totally agrees with Mr Richard Jones' notion to remove the reference to harm.

The Society would totally support the introduction of a formalized licensing provision, so as to monitor and regulate those that are licensed. As you would appreciate, without an appropriate licence tracking measure, the issuing of licences is an otherwise ticket to conduct untoward actions or inactions, if one so desired.

Animal-Liberation stated:

We write to support the amendment to the NPWS Act ... the provision of an alternative is particularly welcome. Lethal control of any species is both inhumane and self-defeating.

WIRES concluded:

The establishment of non-lethal licences is in line with the objectives and principles of WIRES and the establishment of a central register which is available for inspection is a positive move from an administrative perspective.

The protection of our fauna is vital. In the past 200 years, more species have become extinct in Australia than in any other country on earth. We must reverse this appalling record.

The ability for the National Parks and Wildlife Service to issue non-lethal licences for the first time is a big step in the right direction. Such a move would be applauded by all environmental groups throughout Australia.

The Environment Liaison Office said:

The peak environment groups of NSW strongly support the National Parks & Wildlife Amendment (Occupiers' Licences) Bill 2002... The expanded scope of the occupiers licence will provide greater flexibility for finding innovative, humane and ecologically beneficial solutions to relieve the problems caused by native animals to landholders; and at the same time, ensure that an attempt is made to minimise the impacts of our native animals.

The World League for the Protection of Animals stated:

The use of non-lethal mechanisms to address problems has many advantages, especially in relation to protected and vulnerable animals, but also in relation to the environment as a whole ... There is enormous community concern at some of the methods used to address issues of animals seen as "pests". For these reasons and for the increased level of transparency that would result, we support the Bill.

The HSI, the world's largest animal welfare organisation, stated:

In making the register inspectable by the public, the accountability and transparency of these processes would be enhanced. Groups with an interest in particular locations or species could undertake information gathering exercises to assess possible deleterious impacts occurring, and scientific enquiry would be assisted by providing information in an accessible, timely and economic format. Wildlife rehabilitation groups would be able to check that animals were not being released into locations where those species were perceived as causing problems, and locations of and reasons for conflicts between native animals and humans would be highlighted.

HSI fully supports these long overdue amendments to the NPWS Act, and believes that they can only further the efforts of conservation within NSW.

I sincerely thank these organisations for their support. I urge all honourable members to sincerely consider the irreversible damage we are doing to our native wildlife populations and to support this bill. It is quite clear that if we do nothing, ultimately we will have no native species left to protect. I commend the bill to the House.

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

AGL CORPORATE CONVERSION BILL

Second Reading

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [2.55 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The AGL Corporate Conversion Bill 2002 introduces important changes for one of New South Wales' oldest institutions, the Australian Gas Light Company.

Since its inception in 1837 to light the streets of Sydney with gas, AGL has grown to be a major Australian company with operations throughout mainland Australia and in other countries, across the energy sector.

The Bill is to provide a mechanism to constitute The Australian Gas Light Company, or AGL, as a body corporate under the law of New South Wales with a modern corporate structure and to authorise the Company, once incorporated, to apply to be registered as a public company limited by shares under the Corporations Act 2001 of the Commonwealth.

This Bill also amends the *Gas Industry Restructuring Act 1986* to remove the 5% limit on shareholdings in the Company on its registration as a public company and in the period to the removal of that limit, to strengthen provisions relating to the enforcement of that limit.

As members will be aware, on 2 April 2001 the Government announced that AGL would be converted to a Corporations Law company.

The corporate conversion process is a pathway down which many other historic companies such as the Bank of New South Wales and AMP have proceeded. AGL will be one of the last organisations to achieve regulation as a company under the National Corporations legislation scheme.

The Bill is a result of the joint implementation process established between the Government, its relevant departments and AGL.

The *AGL Corporate Conversion Bill* deals with AGL as an entity.

It is about the corporate structure and arrangements governing one of New South Wales's oldest businesses.

It is not about changing the regulatory framework for the electricity and gas sectors, nor does it alter the consumer and environmental protections or the economic regulation of the industry.

Today, AGL is currently governed by a series of Acts, by-laws and other regulations put in place to regulate what was once a monopoly gas supplier.

Many of these components date back to the first half of the 19th century.

This Bill will allow AGL to be fully regulated under the Corporations Act as a modern company and will replace its 164 year old constituent documents with a modern constitution.

AGL was formed in 1837 as a gas utility under the *Australian Gas Light Company Act* and was first listed in 1871.

The 1837 Act, and subsequent amending Acts, which included shareholding restrictions of 5% and differential voting rights provided in the Gas Industry Restructuring Act 1986, were designed to prevent AGL, as the monopoly gas utility company, from falling under the control of any single shareholder, or group of shareholders acting in concert.

In essence, AGL was subject to company-specific regulation.

There are a number of important rationales underlying the Government's decision to enact AGL's corporate conversion contained in the Bill.

Firstly, as a company governed by its own Act of Parliament, AGL is treated quite differently to its competitors and other listed companies.

AGL's legislation provides it with a number of special powers, rights and obligations that were appropriate for a monopoly gas utility established under New South Wales law.

In addition, AGL's legislation contains mechanisms restricting any one shareholder holding more than 5 per cent of its shares, provides for disproportionate voting rights, and allows it to make by-laws that have the effect of law.

Moving AGL to the same corporate legislation platform as other companies is consistent with the policy position, endorsed by all governments in Australia, to have a national corporations legislation scheme.

Secondly, the Government has undertaken to reform the energy industry and the principle of competitive neutrality requires that AGL should be subject to the same restrictions, controls and rewards as other non-government owned energy corporations.

Other companies with which AGL competes do not have special powers, rights and obligations or legislative shareholding limitation mechanisms.

There is therefore no "level playing field".

There is no compelling policy or other reason why AGL should be regulated differently from other energy or publicly listed corporations, or why the New South Wales Government should have any significant role to play in the operation of AGL as a private sector company above any other energy company.

Thirdly, the original justification for the shareholding control restrictions appears to have been a desire to prevent a private owner from abusing the position of AGL as a monopoly gas utility company that it historically enjoyed in the supply of gas to New South Wales customers.

The implementation of energy full retail contestability and open third party access to gas networks including all of AGL's networks, as well as the overarching regulatory framework provided by the *Gas Supply Act 1996* remove this argument for a company specific limitation.

In addition, shareholding limitations are not generally supported for other major Australian companies, except in limited circumstances and usually when they apply to all participants in an industry, such as the media.

Fourthly, AGL's existing shareholder voting rights, which give some shareholders more votes than others, are not consistent with modern corporate practice of most publicly listed companies on the Australian Stock Exchange (ASX).

I now turn to the detail of the Bill.

The Bill has two aspects:

1. the legislation enabling the conversion and;
2. compliance legislation to ensure no investor takes unfair advantage of the AGL corporate conversion reform package.

I will address each of these in details.

At present, AGL is not incorporated.

Its assets are vested in the Company Secretary on behalf of the Company of Proprietors.

Liabilities and claims can be recovered by action against the Secretary.

The Corporations Act sets out the procedure which must be followed in order for AGL to become a company registered under that Act.

Chapter 5B, Part 5B.1 of the Corporations Act sets out a procedure whereby a body corporate that is not a company may be registered under the Corporations Act as, amongst other things, a public company limited by shares.

While AGL is a registered body under the Corporations Act, it is not a company registered under the Corporations Act for the purposes of the Corporations Act.

In order for AGL to become a company which is regulated solely by the Corporations Act, enabling legislation must be passed which provides for the "conversion" of AGL into a body corporate.

The method adopted is called the "corporatisation" method.

AGL will be firstly converted into a body corporate under the Bill. All assets and liabilities will be vested in the corporatised AGL.

Corporatised AGL is to the fullest extent possible taken to be a continuation of the same company, and the same legal entity, as AGL.

All officers and employees of AGL will be taken to be officers and employees of corporatised AGL.

All contracts with AGL will be taken to be contracts with corporatised AGL.

All references to AGL in any instrument will be taken to be references to corporatised AGL.

The financial position of AGL and its accounts are taken to be the opening financial position and accounts of corporatised AGL. Corporatised AGL is then registered, as a company under the Corporations Act.

To register a body as a company under Part 5B.1 of the Corporations Law, AGL will lodge an application with the Australian Securities and Investments Commission.

Before conversion of AGL into a body corporate, AGL shareholders must approve the passing of a resolution at a general meeting that:

- Resolves that AGL be constituted as a body corporate under the proposed Act;
- Approves a constitution for AGL on its conversion into a body corporate;
- Resolves that AGL be registered as a public company limited by shares under the Corporations Act.

All relevant legislation governing AGL as a company is to be repealed.

This is planned to occur in parallel with commencement of the proposed bill.

The main legislation to be repealed includes the *Australian Gas Light Company Acts* of 1837, 1839, 1849, 1858 and 1883 and relevant sections of the Gas Industry Restructuring Act 1986.

It is proposed that this will occur automatically upon the registration of AGL as a company.

If the Parliament accepts the Government's proposed Bill and once I am satisfied the relevant provisions have been complied with, on application by AGL I will issue a compliance certificate and conversion order to AGL specifying the conversion date that AGL be registered as a Company under the Corporations Act.

This conversion date is expected to be one month after the passing of the relevant resolution by AGL shareholders and is targeted to occur around 1 July 2002, the commencement of the new financial year.

Under this process, the Bill will confirm AGL's ability to continue to do business after conversion.

In addition, the Bill has also the effect of strengthening the application of the current 5% limit on the shareholdings in AGL for an interim period, from the date of the public announcement of removal of the restrictions until AGL is converted into a body corporate and registered under the Corporations Act as described above.

Last year, when I announced the Government's policy on AGL's corporate conversion, I noted that once the market became aware that the shareholding limits would be removed, there may be an incentive for some parties to attempt to illegally acquire a higher level of holding than 5% prior to the relevant legislative changes taking effect.

As I indicated last April, it is the intention of the Government that no one should take financial advantage of the corporate conversion process.

Retrospective measures are introduced in this Bill to tighten the prohibition on a person owning more than 5% of the shares in AGL between 2 April 2001 and the date of AGL registering as a company under the Corporations Act.

The Government has given a clear signal to the market that this will not be tolerated.

It is proposed therefore to strengthen current legislation to remove any chance that a profit could be made or any advantage be taken during the interim period before removal of the 5% limit.

This legislation will introduce the following additional measures:

1. The obligation imposed on AGL to monitor its share register and inform the Minister whether it suspects any breach of the 5% limit is enhanced through a requirement that AGL report to the Minister in writing regarding its share monitoring obligations within 7 days after the date of assent to this legislation and then 7 days after the date of registration;
2. The penalty for contravention is significantly increased to include a significant monetary penalty of up to 5,000 penalty units, that is \$550,000;
3. Where the Minister has ordered a person to dispose of shares, the Minister may also direct that the person pay to the Energy Corporation of NSW any realised capital gain on the shares;
4. The Minister may require AGL to provide further information on its Share Register;
5. The Minister may obtain expert advice concerning these provisions and their enforcement; and
6. Powers given to the Minister to request a copy of the share register and to inquire as to the beneficial ownership of shares held.

The above transitional compliance measures are in addition to Part 4 of the *Gas Industry Restructuring Act* under which there are already a number of measures concerning shareholding limits:

- The Minister can decide whether there has been a contravention of the 5% limit and order that the contravention be remedied;
- The Minister can order that the offending shares be sold, and if the order is not complied with, the Minister can direct that the shares vest in a body which will sell them and retain 5% of the sale proceeds as commission (which, after defraying expenses, is to be remitted to the Consolidated Fund);
- The Minister can direct AGL not to pay dividends or other sums in respect of offending shares;
- The Minister can require persons to furnish information in relation to shareholdings where the Minister believes there are reasonable grounds that a person has information;
- AGL can refuse to register a transfer of shares if the proposed transferee does not declare that the transfer will not result in a contravention (thus rendering those shares unsaleable); and
- AGL can restrict voting rights attached to shares if it is aware of a contravention.

This compliance legislation will apply retrospectively from the date of the announcement of AGL's corporate conversion (2 April 2001) to the date of removal of the shareholding limitation.

This will deter any potential illegal trading.

The implementation process is also designed to avoid adverse consequences for AGL, its customers and shareholders as well as the NSW Government.

AGL has formally advised the Government that the Bill is acceptable to it.

This Bill is also important in achieving a level playing field between AGL and other energy companies in a competitive NSW energy market and ensuring that AGL is treated in the same way as other companies who are regulated in the energy sector.

Whilst this legislation deals with complex corporate regulatory issues, the policy is simple—AGL will become just the same as any other company participating in the energy sector.

This is a good outcome for AGL, its shareholders and consumers because it reinforces a competitive market.

Redundant and inappropriate provisions will be removed to better reflect the reformed gas, electricity and utilities markets.

I commend the Bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [2.55 p.m.]: The Opposition is pleased to support the AGL Corporate Conversion Bill. It is an important step in the transition of the Australian Gas Light Company and changes the structure of AGL to put the company on a footing equal to many other major Australian companies. As the Minister for Energy said during his second reading speech in another place, AGL has grown since its formation in 1837 to become a major Australian company, with operations across mainland Australia and offshore. The purpose of the legislation before the House is to convert AGL to a body corporate under New South Wales law. It will establish AGL under a modern corporate structure and allow the company to be registered as a public company limited by shares under the Commonwealth Corporations Act.

There is great complexity involved as this bill must complement both Commonwealth and New Zealand legislation and it includes a complex series of times and dates. The bill will also amend the Gas

Industry Restructuring Act 1996 to remove the 5 per cent shareholding limit currently applied to AGL shares. That limit will be removed upon the registration of AGL as a public company. The bill also contains provisions designed to strengthen the enforcement of that limit. The bill will repeal several pieces of legislation that govern AGL. Honourable members may be interested to hear some of the Acts under which AGL operates at present and which will be repealed. The legislation will repeal the Australian Gas Light Company Acts of 1837, 1839, 1849, 1858 and 1883 and will also do away with relevant parts of the Gas Industry Restructuring Act 1986. That repealing will occur automatically upon the registration of AGL as a company.

Reverend the Hon. Fred Nile: Were you here for all of that legislation?

The Hon. DUNCAN GAY: No—not even you were, Fred. It is important to note, as AGL pointed out in its briefings to the Opposition, that this bill relates only to the corporate structure and governance arrangements applicable to AGL. It does not change the overall regulatory framework for the electricity and gas industries in New South Wales and it does not alter the consumer and environmental protection or economic regulation of the industry. It is about establishing AGL as a company with a modern business structure. The current corporate structure of AGL appears to be one of the great anomalies of history. AGL is currently governed by a series of Acts, regulations and by-laws dating back to 1837. Some of these nineteenth century legislative requirements are more than a little archaic, and the Opposition agrees with moves to modernise the corporate structure of AGL. The 5 per cent shareholding limit to which I referred earlier is a hangover from earlier times and was apparently designed to prevent AGL from falling under the control of a single shareholder at a time when the company was providing a monopoly gas service to the people of New South Wales.

Another current provision allows differential voting rights among AGL shareholders. In effect, smaller shareholders have a larger vote compared with that of larger shareholders. It is company-specific legislation—a quirk of history has remained in place in this company since 1837. The Opposition understands and concurs with the Government's reasoning in bringing forward the corporate conversion legislation. That reasoning centres around the need to move the company to the same corporate structure as its competitors and other major Australian companies and is broadly consistent with a desire to move to a national corporations legislation scheme.

The current corporate structure of AGL is company-specific. Currently, special powers, rights and obligations are conferred upon AGL, including that this company is able to make by-laws that have an effect on the law in New South Wales. The current structure also means that the assets and liabilities of the company are vested in a single person—the company secretary—rather than in the corporate entity. That is unbelievable. If one wants to take legal action against AGL one sues that person—he or she would have to be a brave person. The company secretary has control of the assets. A lesser person might have found his or her way to Majorca or somewhere! It is testament to the fact that over the years AGL has had company secretaries of great integrity. As I have said, if one wants to take legal action against AGL one takes it against the individual and not the company—that is pretty strange.

The bill brings AGL into line with other major Australian companies. It ensures that issues—including shareholder voting rights—are consistent with modern corporate practices of publicly listed companies on the Australian Stock Exchange. It creates a level playing field. This bill contains two main parts: the first deals with the process of corporate conversion; the second contains the essential compliance legislation that is needed to ensure that no investor is able to take unfair advantage of the corporate conversion process. The bill is extremely detailed in regard to the first step—the corporate conversion—given the myriad of bills dating back to 1837. In order for AGL to become a company under the Corporations Law it must first become a body corporate. The bill sets out this process with the corporatised AGL for all intents and purposes becoming a continuation of the non-corporatised AGL—that is, all assets and liabilities will be transferred to the corporatised company, as will all officers and employees. All contracts and all references to AGL in any document or instrument will be taken to mean the corporatised AGL.

In addition, the financial position and accounts of AGL will be taken to be the opening financial position of the corporatised company. Once AGL is established as a body corporate it becomes registered as a company under the Corporations Act. However, before AGL registers as a company under the Corporations Act several steps must be taken. AGL shareholders must approve the passing of a motion resolving the company to become a body corporate. It goes back to the current owners. The shareholders must approve a constitution of a corporatised company and pass a resolution allowing the company to be registered as a public company limited by shares under Commonwealth legislation.

The Minister for Energy has a key role under this legislation, and the Opposition hopes that he will exercise that role without undue delay provided all the criteria are met. The Minister will issue a compliance

certificate and conversion order to AGL, setting out the date that AGL will be registered as a company under the Corporations Act. That certificate can be issued only after an application has been lodged with the Minister by AGL. The Opposition understands, from discussions with AGL, that the conversion date is expected to be approximately one month after the passing of the relevant motion by AGL shareholders and it is expected to coincide with the start of the new financial year.

The second part of the bill is, in the view of the Opposition, just as important as the conversion process. It deals with measures designed to ensure that no person or company can gain an advantage by securing a share of AGL higher than the current 5 per cent shareholding limit. I congratulate the Government—it is rare for me to do so—on inserting such provisions in the bill. It is appropriate that measures be taken to ensure that this corporate conversion process cannot be abused prior to the legislative changes being proclaimed. Therefore, the bill imposes obligations on AGL to monitor its share register and to inform the Minister for Energy if it suspects any breach of its 5 per cent shareholding limit. In addition, the penalty for contravening the 5 per cent limit has been boosted to 5,000 penalty units, equivalent to \$5,500.

The Hon. Richard Jones: It is \$550,000.

The Hon. DUNCAN GAY: Equivalent to \$550,000. If it is found that any person or company has breached the 5 per cent limit the Minister may order that the shares be disposed of and the realised capital gains will be paid to the Energy Corporation of New South Wales. The corporation needs it after the losses in New South Wales—but that is another matter. Other provisions relating to this part of the Act mean that the Minister may require AGL to provide further information on a share register and he is also able to get advice on the enforcement of the provisions. He is able to request a copy of the share register and inquire into the beneficial ownership of the shares held. All the points I have mentioned, along with measures already enacted under part 4 of the Gas Industry Restructuring Act, will go a long way to ensuring that the 5 per cent shareholding limit is not breached prior to the appropriate legislative changes coming into force.

This provision of the bill is retrospective to 2 April 2001, the date on which the Government announced its intention to begin the corporate conversion process. The Opposition thanks AGL for its briefings and its forthrightness with respect to this bill, in particular Ian Woodward, Bill McLaughlin and Sam Pearce, and many others who met with us. I also thank the staff of the Minister for Energy, whom we have found pleasant, efficient and competent. We recognise the importance of this bill to the future operations of AGL and to ensuring a level corporate playing field in New South Wales. As I stated earlier, this bill establishes AGL as a company with a modern business structure. The Opposition supports the bill.

[Debate interrupted.]

DISTINGUISHED VISITORS

The DEPUTY-PRESIDENT (The Hon. Helen Sham-Ho): Order! I extend a warm welcome to a delegation from China, Beijing and Shanghai, invited by the Chinese community leader Frank Chou; the Director, Liu Heng, member of the Standing Committee of the National People's Congress; and the Vice-Director, Chen Mingde, member and Deputy Secretary-General of the Central Committee of the Chinese People's Political Consultative Conference.

AGL CORPORATE CONVERSION BILL

Second Reading

[Debate resumed.]

Ms LEE RHIANNON [3.10 p.m.]: The AGL Corporate Conversion Bill removes a number of corporate governance restrictions from the AGL and prepares it for corporatisation. This is a matter of concern for the Greens and we do not support the bill. The Greens are concerned that benefits argued by the Government do not outweigh potential costs to the community and to our environment. This is yet another example of Labor's infatuation with market solutions and the corporate culture. Members would be aware that many times in this House I have spoken of the damaging influence donations from corporate bodies are having on our political parties. We see this bill within that context. This type of legislation is introduced too often.

The AGL remains the monopoly owner of the pipes that reticulate gas to households and businesses throughout Sydney. Although, in theory, open access provides competition for gas bills, the extent to which this

works in reality at the retail level is yet to be tested. In essence, Labor and Coalition governments alike have embarked on a massive experiment, and the subjects of those experiments are the people of Sydney. While the marketeers, the advertising firms and the corporate executives stand to become even wealthier than they already are, there is little or no experience to prove that the people of New South Wales will be better off. Indeed, judging from experience with privatised and deregulated electricity distribution and retailing in Victoria, there is much to be feared, especially by low income earners and those who care about the environment. The households and businesses of New South Wales are being exposed to significant risks of higher prices and lower quality of service with no better justification than the cant of the neo-classical economic fundamentalists who dominate the Treasury and, through it, this Government.

The Hon. Duncan Gay: This is not a privatisation bill. The AGL is already privately owned.

Ms LEE RHIANNON: It is already privately owned but you know that it can go one step further with all aspects of the industry going over to the private sector. The Deputy Leader of the Opposition has expressed pride that his party is standing up against the privatisation of the electricity industry, so I think he knows that this is a worry. The AGL is in a unique position in New South Wales as the private enterprise owner of essential infrastructure, the management of which exhibits large social and environmental implications. The Greens argue that protection of the public interest thus should not be left to market forces, to the accumulated consequences of mass individual self-interest.

It is interesting that the Minister's second reading speech uses the corporatisation of the erstwhile State Bank of New South Wales as an example of the process planned for the AGL. I have to say that this is a poor choice because the State Bank no longer exists, having been swallowed up by corporate giants. Its disappearance has been part of a larger trend in the run-down of banking sector services to the community. The Greens are worried that the same fate could befall the AGL. The Greens remain concerned that a dominant player in the gas industry is being handed over to the free market regulation model without appropriate protections being put in place for consumers or the environment.

In particular, we believe that the Government has an obligation to ensure that gas prices reflect not only people's ability to pay but also the environmental consequences. These are the safeguards that we think should be in place. Balancing the needs for affordability, particularly for low income earners, with environmental performance is a crucial yet complex task. It is naive in the extreme to believe that this could be achieved without deliberate and intentional Government intervention in the operations of a monopoly owner of the industry. Some of this could have been managed if the Government had done as it did in the 1994 Sydney Water Act, that is, introduced triple bottom-line accounting.

The Hon. Duncan Gay: This company is not a monopoly owner any more. It has not been for a long time.

Ms LEE RHIANNON: That does not mean that triple bottom-line accounting could not be used. Section 21 of that Act specifies that the objectives of the corporation include social, environmental and economic considerations. Section 22 ensures that these objectives are implemented in a meaningful way. Triple bottom-line accounting, while no panacea for the problems created by monopoly private enterprise infrastructure ownership, remains a useful tool for ensuring that there is some consideration of objectives beyond the simple maximisation of wealth for the shareholders. I would be interested to hear the Minister respond in relation to the possible use of triple bottom-line accounting.

In the case of the gas industry, the social and environmental consequences of decisions made by the AGL are significant. It is a matter of regret that this opportunity has been lost. The Greens and the environment movement hope that the Government will revisit this issue in the near future. The Greens do not support the bill. While the AGL's current regulatory structures and arrangements are less than perfect, this bill is based on a false adherence to market ideology and it does not provide adequate social or environmental protections that are needed if we are to ensure that future generations are able to enjoy the pleasures of this State as much as we do.

Reverend the Hon. FRED NILE [3.16 p.m.]: The Christian Democratic Party supports the AGL Corporate Conversion Bill. The main purpose of the bill is to modernise the AGL by regulating the administration of its corporate affairs and bringing the legal framework under which the AGL operates into line with that of other privately owned companies. If nothing is done the AGL will be disadvantaged, and in the long run this will affect all consumers who receive gas through the AGL. The bill will put the AGL on the same legal footing as its competitors in order to facilitate an open and competitive energy market. All members should

agree with that in principle. The AGL was formed in 1837 as a gas utility under the Australian Gas Light Company Act. Therefore many of the laws and regulations applying to it are now out of date. On 10 April the AGL wrote to me about the bill. Mr Ian Woodward, Group General Manager Corporate Development, stated:

The Bill has been prepared in consultation with AGL and has been endorsed by the AGL Board.

His letter also stated:

AGL is currently a body with limited liability for its members, established under NSW legislation dating back to 1837. It is a registered body under the Commonwealth Corporations Act, but is not an incorporated body.

The objectives of the corporate conversion process is for AGL to become an ordinary public company fully regulated under the Commonwealth Corporations Act with a modern constitution, rather than one with a constitution made up of a mixture of NSW legislation, regulations and by-laws passed by the AGL shareholders.

The corporate conversion process only deals with AGL as a legal entity—it will make no changes to the economic, consumer or environmental regulations affecting AGL as an energy supplier in NSW, or the regulatory framework applying to the NSW energy industry.

The corporate conversion process will result in the removal of the anachronistic and obsolete shareholding limitations and scaled voting mechanisms which currently apply to AGL.

The Bill has been developed to seek to ensure that the corporate conversion process does not give rise to any unintended or adverse consequences for AGL, its shareholders, the NSW consumer or the NSW Government. Whilst this has resulted in some complexity in the Bill, the principles remain clear—that AGL be converted into a modern body corporate governed by the laws applying to ordinary public companies as well as reinforcing the competitive energy market principles applying to the NSW energy industry.

We support the bill and commend the AGL as it serves the consumers of New South Wales.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.20 p.m.]: The Democrats are a little concerned about some aspects of the AGL Corporate Conversion Bill. We note that a letter from AGL states that there will be no difference to the regulatory framework if the conversion takes place. No doubt that is true in the short term. However, as was shown following the privatisation of the supply of electricity in Victoria, the players in the market make a lot of difference to how the Government is able to regulate. However, there has been a general change from the interests of consumers to the interests of shareholders. The water industry and some public transport utilities are still in government hands, although Sydney Water is now a statutory corporation.

In Victoria the electricity industry has been privatised. Privatisation has not yet occurred in New South Wales—a position that may change despite assurances to the contrary. When utilities are moved from the public sector to the private sector there is a noticeable difference in service delivery. Banks were partly owned by government, and had the Government of the day wished it could have controlled bank behaviour to ensure quality services at a reasonable price. In the insurance industry, there was a Government-owned insurance company—

The Hon. Duncan Gay: Point of order: My point of order is relevance. The member is giving a dissertation on the evils of privatisation. This bill is not about privatisation—AGL is not owned by the Government. The bill is about the change of corporate structure of a privately owned company. I request that you draw the member's attention to that fact. If he persists, I ask you to rule him out of order.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the point of order: In their usual dimwitted way members of the Opposition fail to see the relevance of my developing the philosophic line of the interests of the shareholders versus the interests of the corporate sector in a changing corporate structure. In a couple of minutes I will get to the point, but I would like to develop my philosophical argument without having my chain of thought interrupted by those who are unable to see where it might lead.

The DEPUTY-PRESIDENT (The Hon. Helen Sham-Ho): Order! I ask the member to get to the point quickly. No point of order is involved.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I was speaking about the differences that the privatisation of electricity had made to its regulation. I had spoken about the banking and insurance sectors. The Government previously owned an insurance company and knew about the actuarial figures. The Government had an opinion, it had expertise in the regulation of premiums, and was able to have input into that activity. But

the Government no longer has that expertise, because it no longer has that company, and it could become a player in the market and force others to compete with it. Therefore, we are currently at the mercy of people in Zurich about whether we have doctors in our hospitals or whether our children are able to use playgrounds—which are matters involving insurance. All that may seem irrelevant, as the Opposition would like us to believe.

I am well aware that AGL is a private company. It developed from a company having a limitation of 5 per cent shareholding to one that will be open to shareholders buying any number of shares, as happens with any listed company. That will mean that many people will be able to buy its shares and, therefore, its share price is likely to rise. I am not a whiz about the stock market; but even I know that if people are able to buy larger parcels of shares in a company, the price of those shares may well be affected. If that is the case, there may be also an effect on the price charged for gas. Technically that could be included in the corporation's regulatory framework.

However, this company is almost a monopoly; it has the lion's share of the Sydney gas market. The corporation has been restructured so that there are what are called paper walls between its retail and wholesale operations. Theoretically, the separation of the retail and wholesale operations could allow the Treasurer to say that there is competition in the gas market, and certainly there is—but it is a market with a dominant player. The removal of the 5 per cent shareholding may make a difference to the ownership—it would be unlikely that it did not—and that may make a difference to the company's corporate behaviour and its regulatory framework and the way it is implemented.

While I agree it is preferable to have uniformity in the way that corporations are listed, I would not object to the bill at a philosophic level. I flag, however, that the public interest needs to be taken into account. Changes to the insurance and banking markets included full privatisation of those activities. What needs to be taken into account, however, is shareholder interest versus consumer interest in a political and economic framework. The Democrats urge the Government to ensure that the changes will provide more corporate freedom and get rid of exemptions. It should diligently look after the interests of consumers in a framework of changing power relativities between shareholders and consumers that accompanies such legislation.

The Hon. RICHARD JONES [3.29 p.m.]: I support the legislation. I do not have the same feelings as some others about the corporate conversion of AGL. It is interesting to note the origins of the company, which was set up in 1837 to light the streets of Sydney. In those days there were gas lights in the streets. It was a very different world. Many things have changed. One of my colleagues intended to move amendments to the legislation dealing with the triple bottom line but, unfortunately, the amendments have not been prepared. Had the amendments been moved and agreed to, they would have ensured that AGL had cognisance of what is now called the triple bottom line.

Peter Duncan, the Chief Executive Officer of the Shell Company of Australia, recently attended Outlook 2002 and stated that companies that take a broader role in society also perform better financially. He said that in today's competitive global economy many businesses are looking beyond short-term financial considerations and are delivering against the triple bottom line of social and environmental impact, as well as economic performance. He said that the responsible behaviour of companies is becoming an important influence in the choices of consumers and employees. Companies that are able to measure, digest and report on a wide range of financial and non-financial measures are more than likely the ones that know the workings of the company best and, therefore, what is driving change within the business and external environment. In the long run this will benefit profits, the environment and our community. His comments are very forward thinking.

Around the world the Shell Company is looking very much more at the triple bottom line, which is now common currency in Europe and America. Unfortunately, we are dragging our feet in recognising the importance of the social and environmental behaviour of companies, which also financially benefits companies. The director of the Eco Fund, Susan Gosling, said that investors are coming to the conclusion that certain ethical issues and, in particular, factors relating to environmental sustainability are an increasingly important determinant of the financial success of business and, hence, of investment returns. She said that positive decision-making criteria could assist fund managers to select companies with a superior social or environmental performance and potentially superior returns. A recent review concluded that the effects of socially responsible investment screening on the portfolio returns is at least not negative, and the majority of recent studies indicate that the effect is positive.

In other words, if AGL starts looking at the triple bottom line—and I believe it will—it will find that profits and investor confidence will increase. It would probably be a very good company in which to invest. I

hope that it stays in Australian hands after its conversion. Recently, the Australian Conservation Foundation highlighted a report by Australian Collaboration that reveals that, unfortunately, we are a bit slow in adopting the triple bottom line. Emeritus Professor David Yencken, author of the report, said that regular, comprehensive and independent reporting of social, cultural, environmental and economic trends is of fundamental importance to the future of our nation. Without triple bottom line economic, social and environmental reporting there is an inadequate basis for good decision making, not only by government but by many other groups seeking to plan effectively.

Australian Collaboration is a group of leading community, consumer and environmental organisations including the Australian Conservation Foundation, the Australian Council of Social Service, the Australian Consumers Association, the Australian Council for Overseas Aid, the Aboriginal and Torres Strait Islander Commission, the Federation of Ethnic Communities Council of Australia, and the National Council of Churches in Australia. Many organisations are aware of the importance of the triple bottom line. I note that, as result of a motion in this Chamber, the triple bottom line is incorporated in the objects of Sydney Water. The truncated principal objectives of the corporation are to be a successful business, to protect the environment and to protect public health. Section 22 of the Act, under the heading "Implementation of principal objectives", provides:

- (1) In implementing the principal objectives set out in section 21, the Corporation has the following special objectives:
 - (a) to reduce risks to human health,
 - (b) to prevent the degradation of the environment.

I am pleased to say that State Forests, which has changed radically from when I first came into this House some 14½ years ago, is also considering the triple bottom line. It is doing some very interesting work on a number of issues. In the *Bush Telegraph* State Forests stated that there is a growing trend among organisations toward measuring and reporting the performance against the triple bottom line, a catchphrase for what is ultimately sustainable management. It went on to say that a balanced triple bottom line is one that successfully maintains economic prosperity, environmental quality and social responsibility. Accounting for, and reporting on, the triple bottom line requires an organisation to monitor performance with measures that are transparent, verifiable and meaningful. In 2001 State Forests established a new staff group to investigate triple bottom-line accounting and reporting options.

One of the group's first projects was to develop a triple bottom line, or sustainability report, outlining State Forests performance in sustainably managing a range of environmental, social and economic values. Wyong Shire Council has adopted the practice and, apparently, Westpac is involved in a triple bottom-line stocktake. A report in *ethicalinvestor* by Mr Shaun Mays, the Westpac Commercial Services Managing Director, has called for the better use of information already available within companies to measure environmental, social and economic performance. Large corporations and corporations such as Wyong Shire Council and State-owned corporations are already involved. After the conversion takes place I will urge AGL to have a close look, as these other large corporations are doing, at the triple bottom line to ensure that it is not in business just for the profits, but also for social and environmental reasons. I believe AGL will do that in any event.

The Hon. Dr PETER WONG [3.36 p.m.]: The Unity Party will not oppose the AGL Corporate Conversion Bill. I appreciate that the legislation will allow AGL to restructure and modernise its corporate and management structure. I appreciate that, as a public company, AGL should be able to operate on a level playing field with its competitors. I note with interest the history of AGL. The legislation was intended to ensure that AGL did not come under the influence of one owner. That is probably not a bad idea. I am concerned that, regardless of the safeguards, the removal of the 5 per cent on shareholdings in AGL will allow it to be taken over by another company, or companies over time, resulting in a greater concentration of ownership in the energy industry. AGL is the only gas provider for the people of Sydney. I hope that it continues to provide a high standard of service under its corporatised structure. I trust that the Energy and Water Ombudsman will have adequate power and resources to continue its watchdog role.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [3.37 p.m.], in reply: I thank all honourable members for their contributions to the debate. The AGL Corporate Conversion Bill deals with AGL as an entity, as was pointed out by a number of members. It is about the corporate structure and arrangements governing one of New South Wales oldest businesses. I make it very clear that the bill is not about changing the regulatory framework for the electricity and gas sectors, nor will it alter the consumer and environmental protections, or the

economic regulation of the industry. A number of members seemed to think that was the case. Ms Lee Rhiannon raised some specific issues that are outside the auspices of the legislation. All energy companies, including AGL, are regulated by a series of State and Commonwealth statutes. These changes affect AGL as a corporate entity.

There is no proposal to make changes to the economic consumer or environmental regulations affecting AGL as an energy supplier in New South Wales. The bill is also important in achieving a level playing field between AGL and other energy companies in a competitive New South Wales energy market, and ensuring that AGL is treated in the same way as other companies that are regulated in the energy sector. Although the legislation deals with complex, corporate, regulatory issues, the policy is simple: AGL will become the same as any other company participating in the energy sector. This is a good outcome for AGL, its shareholders and consumers because it reinforces our competitive market. Redundant and inappropriate provisions will be removed to better reflect the reformed gas, electricity and utilities markets.

A number of members made reference in one way or another to triple line reporting, so it is worthwhile addressing that issue. Whilst it is important that all corporations be conscious of the environmental impact of their activities and conform with the changing expectations of the community, the Government does not believe that it is appropriate for this legislation to compel a single company, that is AGL, to undertake triple bottom-line reporting. As honourable members will recall, one of the key purposes of this bill is to remove company-specific regulation and to place AGL on the same footing as its competitors and other listed companies. Placing an additional requirement on AGL through this bill would be inconsistent with this objective.

The Government understands, however, that peak environment groups have raised these issues with some members—in particular AGL's demand management initiatives, environmental targets and the environmental sustainability of its activities. The Government has referred these issues to AGL's attention. AGL has advised the Government that it does report on some social and environmental issues already and a great deal of information is publicly available on its web site. For example, AGL already undertakes a social responsibility reporting mechanism, has long adopted a health safety and environmental policy for its employees, and has a customer council to overview its relationship with its customers. AGL has further advised the Government that it is prepared to meet with the peak environmental groups and discuss the issue of reporting by corporations on the triple bottom line. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

HOME BUILDING AMENDMENT (INSURANCE) BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [3.42 p.m.]: I move:

That this bill be now read a second time.

As the second reading speech has been delivered in the other place, I seek leave to have it incorporated in *Hansard*.

Leave granted.

The home warranty insurance scheme is established under the Home Building Act and commenced in May 1997. The scheme along with licensing, compliance and education is a key component of the consumer protection regime for the home building industry. Cover is provided by the private insurance sector.

In recent times a number of significant events, such as the collapse of HIH and the events of September 11, have dramatically changed the insurance landscape. These events have impacted on a wide range of businesses, community groups and occupations. The difficulties created by these changes in the insurance market have been well publicised.

Home warranty insurance has not been immune from these developments with major insurers indicating their belief that the current scheme is not viable.

To ensure there is viable consumer protection for homeowners, the NSW and Victorian Governments negotiated in tandem with the major players in the home warranty insurance industry. The outcome is a sustainable home warranty scheme provided through private insurers.

On March 13, 2002 the NSW and Victorian Governments announced uniform changes to their home warranty schemes. The Bill provides for a number of these reforms which I will outline shortly.

In addition to announcing these structural changes to their schemes, the NSW and Victorian Governments have taken action to overcome the situation created by the withdrawal of reinsurance support for sectors of the market. The NSW and Victorian Governments have put in place arrangements to provide the necessary reinsurance in these areas. This has ensured that the three home warranty insurers, Dexta, Royal & Sun Alliance and Reward, can continue to offer insurance to builders, including cover for high-rise projects. These arrangements will operate in the short term. The Government is continuing to work towards a longer-term solution.

The Bill provides for amendments to both the Home Building Act and the Regulation.

Cover under the scheme will be provided on last resort basis. Loss resulting from non-completion of the work because of the insolvency, death or disappearance of the contractor will be covered. A homeowner will also be able to lodge a claim where he or she is unable to recover compensation from the contractor or take action to have the contractor rectify the problem because of the insolvency, death or disappearance of the contractor. Similar provisions will apply to claims in relation to owner-builder work and the supply of a kit home.

The period of cover under the scheme for structural defects is to be six years after completion of the work or end of the contract whichever is later. For other defects cover of two years will apply.

Insurance covering building work or the supply of a kit home by a licensed contractor will still have to be taken out prior to commencement of the work or supply of the kit. However, in line with the new period of cover under the scheme owner-builders will only have to take out insurance if they sell their home within 6 years of completion of the work.

The amount of cover for defective work will remain at \$200,000. This will include cover for such reasonable legal and other costs as may be incurred by the claimant in seeking to recover compensation from the contract.

In the case of a claim for non-completion of work the insurance contract may limit liability to an amount that is 20% of the contract price of the job.

Because of the difficulties that the home warranty market has experienced, a number of industry bodies have been examining the feasibility of setting up alternative indemnity schemes to cover work. Provided such schemes deliver equal or better cover to the home warranty insurance scheme they have the potential to benefit both industry and consumers.

The problems relating to reinsurance which I mentioned before also make it important for the Government to be able to act quickly to put in place arrangements to avoid dislocation to the building industry. The Bill, therefore, provides that the Minister may approve alternative home building indemnity schemes or similar arrangements.

The reforms contained in the Bill will enable builders to continue building while ensuring continuing viable consumer protection homeowners. Faced with global issues confronting the insurance industry the Government has acted to maintain support for consumers and builders while providing a viable market for insurers.

The Bill provides for enabling provisions under which, if appropriate, the Building Insurers' Guarantee Fund may be used as a vehicle to administer arrangements such as the re-insurance arrangements which the Government has recently put in place. The Guarantee Corporation currently handles claims under the Government's HIH rescue scheme.

I commend the Bill to the House.

The Hon. JOHN RYAN [3.42 p.m.]: I have little doubt that 2002 will go down in the history of the world as the year of the insurance policy. This House seems to have debated nothing but insurance for the past 12 months, and possibly we will do so for some time in the future. The bill has come into the Parliament and is about to be passed by this House in less than 48 hours. The Opposition has enormous reservations about allowing that to happen. The bill will have a significant impact on consumers, builders and the insurance industry. For more than two years, day after day, I and other members have brought to this House many serious concerns of home building consumers and home builders. Although it is a cliché, it is true that there is not a more important investment that most people will make in their lives than the purchase of their family home. Hundreds of thousands of people in New South Wales purchase homes during their lifetimes. It is incumbent on us to make sure that they do so in a consumer protected environment which ensures that they get what they pay for—no more, no less. If a client contracts with a builder to build a house in 16 weeks, the client should get a house built in 16 weeks.

All home building clients make a commitment to pay into an insurance policy. They are obliged to take out an insurance policy by means of the Home Building Act. They have understood that, until now, the policy covers them for \$200,000 for seven years for any defective or faulty building work, according to the statutory warranties given in the Home Building Act. That cover has barely been adequate. The House should understand that we are now going to slash those benefits significantly and possibly severely. The House does not know, and the Minister for Fair Trading has not told us, the exact impact that this slashing of benefits will have on individual constituents.

I am sure that most honourable members would know that the consumer group known as the Building Action Review Group [BARG] has campaigned steadily for reforms to the Home Building Act and other legislation. That consumer group had no idea until I told it 10 minutes ago that this bill had been through the lower House and will go through the upper House today. The Building Action Review Group has no idea of its provisions. I have not had time to fax the bill to the group, and I am convinced that the Minister has not given it a copy of the bill. I have no doubt that once we pass the bill into law, as the Opposition has agreed to do subject to a condition, Mrs Onorati and her members will believe that we sold them out. I have no doubt that I will get a very angry, bitter and disappointed phone call from Mrs Onorati, whom I have worked with for nearly 2½ years. To be perfectly frank, she has every reason to be annoyed. I am very insecure about passing this bill into law without important questions being asked and answered.

The broad brush of this bill has only been available in the public domain since 11 or 12 March. As honourable members would know, I have a reasonably extensive knowledge of this issue. However, we have been told that the bill has to go through the Parliament today, a day on which all of my notes and material are in my home office. I do not have the capacity to ring my usual contacts to get their comments on this bill. I do not have the capacity to go through my files to look at how the bill will affect many of the people who have written to me. We are told that if the bill is not passed today, the home building industry will be subject to a level of instability and the Opposition will be to blame for that—notwithstanding the fact that the home building industry at the moment, sponsored largely by the Federal Government's first home owners grant, is robust and progressing well.

The Opposition is concerned about the crisis being encountered by builders who are unable to get immediate and quick access to compulsory home warranty insurance in order to start jobs. Those builders, particularly good traders, have an absolute right to have access to that form of insurance. But under no circumstance can we agree to any suggestion that we have delayed the bill. If anything goes wrong, even if it has nothing to do with delaying this bill, the Government will blame the Opposition for it. In my view, the total responsibility for this bill and its impact should rest with the Government. For that reason, we reluctantly agree to the Government's request. If members read the speech that was given by my leader in another place last night, they will see how reluctantly the Opposition agrees to the terms of the bill. We have enormous concerns about the bill. I will outline some of our concerns, but I am hampered by the fact that I do not have access to research, statistics and other details.

In the few hours since I was told that we had to deal with the bill today, I have been involved in briefings and telephone calls to organise and bring forward the detail we need to deal with the bill. Some people may be offended or upset by the Opposition's conduct. There are few occasions on which I have been more offended or upset by my own conduct. In my view, we are not giving this bill the professional treatment that ought to be given legislation. A bill of this nature deserves to be in the House for at least a week so that we, as professional legislators, have a reasonable time to look at its provisions. The Government could not have a credible argument against the bill being made available for examination for a week to allow us detailed consultation. The Government said that it has undertaken consultation. I do not know the extent of that consultation and I do not know of any terms that may have been given by Government members.

The Minister's office is still researching questions that I asked for the first time only an hour or so ago, so I do not have the answers available to me. I am speaking entirely off the cuff, without the security that I would like. I do not believe that is professional or five-tick quality assurance, and I regret that I have to do that. The Opposition is very concerned about passing this legislation with this sort of scrutiny. For that reason the Opposition has suggested, and I understand that the Government will agree, that if the legislation is passed today it will be referred to the Standing Committee on Law and Justice for an immediate inquiry by that committee.

The Opposition asked the Government to agree to refer the Home Building Insurance Amendment Bill and its impact upon home warranty insurance providers, home builders and consumers to the Standing Committee on Law and Justice for an inquiry as soon as possible; to undertake to consider any recommendations that arise from the committee; and to request the chair of the committee to facilitate, where possible, the attendance and participation of interested members of the crossbench who are not members of that committee. The Standing Committee on Law and Justice has a fixed membership, with only one crossbench member.

As crossbench members may have an interest in this issue and may wish to ask questions at the hearings, it is only fair and reasonable that they should have an opportunity to do so. Of course, there must be some control: the committee must be able to transact its business without hindrance. However, the Opposition

does not want to lock the crossbench out, and for that reason has asked the Government for that consideration. I now have in my possession a letter from Minister Aquilina to the Hon. Ron Dyer, Chair of the Standing Committee on Law and Justice. The only apparent difference between the terms of the letter and the terms that I outlined is that it states:

It is understood that in agreeing to the reference of this Bill in this manner, in no way is the government constrained regarding the commencement of this legislation.

I agree with that. I understand that the Government wishes the legislation to commence as soon as possible. That is fine. I do not think the Government has been very reasonable, but I have tried as far as possible to be reasonable in my dealings with the Government because I understand that we have an overriding responsibility to serve the people of New South Wales to the best of our ability. I understand that the issues are urgent and in some respects they are not of the Government's making. The Government did not fly an aeroplane into the twin towers in New York on September 11 last year, nor is it primarily responsible for the collapse of HIH and other things that operate within the insurance environment. Those things are well understood on both sides of the House. In fact, the Leader of the Opposition on another occasion issued a press release—

The Hon. John Della Bosca: Mike?

The Hon. JOHN RYAN: No, Mr Brogden—offering the co-operation of the Opposition in resolving issues such as public liability and indemnity insurance. The Opposition intends to take the same approach with regard to this legislation. However, I am greatly concerned that the House is passing detailed legislation, which will heavily impact on some individuals. It will not heavily impact on the vast majority of members of the public because most members of the public who contract to build a home usually get what they pay for, but for those who do not, the impact will be unbelievable. Those whose homes are not built properly suffer from marriage breakdowns and financial ruin. Sometimes they live for years in the wreckage of their partly completed houses. It is of concern that those people should have to endure such things without the full and adequate protection of home warranty insurance.

Another matter of concern to the Opposition is that to a reasonable extent many of the provisions in the bill have been dictated to the Government by the insurance industry. I have no objection to the insurance industry putting a fair case to the Government that something needs to be done, but we do not have any idea of the actual costs of the scheme. One must ask what will be the impact on consumers of claims. What are consumers getting now for this very expensive insurance that they will not get under the new scheme? I am in no way able to inform the House, and I suspect that the Government is likewise unable to do so. We have been told in general terms that insurance of this nature operates successfully in other States. However, we are not in a position to know that. I would have thought it would be worth making an inquiry to ascertain whether there are any complaints about the schemes operating in other States before we consider introducing it freehold into New South Wales.

This bill is largely a survey of the lowest common denominator available in home warranty insurance across the State, with one single exception: New South Wales already has a maximum benefit of \$200,000 for a claim. We are keeping that one claim, but in every other respect the benefits that have normally been available to New South Wales consumers are being cut. I do not mean this as a personal criticism of the Minister but I use it as an illustration of the environment in which we are working. In the Minister's second reading speech he referred to matters driving the reform, such as the events of September 11 and the HIH Insurance collapse. However, he does not explain in any detail the operation of the bill.

The Opposition has no idea, from the second reading speech, of the specific provisions under which the bill operates. Normally when one reads a second reading speech that detail is available. Indeed, often one does not even need to read the bill. However, in this case it is impossible to understand the provisions of the bill without reading the explanatory notes. The Minister's very brief second reading speech does not provide that information. One of my colleagues in the other place quipped that she has given five-minute speeches which contain more detail than the Minister's second reading speech, and that is true. I do not say that to be critical of the Minister but it causes me to question whether the Minister is not prepared to take the risk in his second reading speech—and we all know that sometimes when something is unclear, a court may use a second reading speech to provide some clarity. The Interpretation Act provides for that.

The Minister was not prepared to commit himself and explain the details of the bill in his second reading speech. The second reading speech contains very little detail. It simply tells us why the bill is necessary, and I am concerned about that. With regard to the insurance industry itself, I would like to have brought to the

House an answer to a question that the Minister for Fair Trading, Mr Watkins, gave to me. I listed each of the insurance companies that provided home warranty insurance and asked for details of the number of claims that had been made, the cost of the premiums, the number of claims that had been refused, and other details. That was information that insurers were supposed to provide to the Government in a timely fashion when the insurance scheme started in 1995.

I am speaking from memory here and it will be interesting to test that later. I discovered that insurers have not provided this information in a timely fashion and some were not up to date. Therefore, we did not have an accurate picture of their profit and loss statements to see how viable this insurance was or how much profit the insurers were making. Even the Government was not diligent enough to force the insurers to provide that information promptly. The Government does not know for certain the profitability of the insurers. It is my understanding that the major insurer for home warranty insurance, Royal and Sun Alliance, reported a number of details that were ultimately relied upon by the Minister in answer to my question.

I understand that those details, which were provided to none other than this Parliament, have since changed. The insurer sold insurance through a front company, Home Warranty Insurance, which had an office in Sydney—I have told honourable members how unresponsive I found its staff to be. Royal and Sun Alliance was the company underwriting the scheme and, upon inquiring about the Sydney operations, it discovered a large number of claims which it told us it had no idea existed. I understand that total liability amounted to about \$30 million.

The insurance companies are telling the Government that the previous scheme was undercut by HIIH premiums and things of that nature and was not financially viable. That might be a fair point, but the insurance companies have an absolute hide to claim that the goalposts have moved when they were supposed to provide the information diligently to the Government throughout the operation of the scheme so that any claims made could be checked. We must remember that this insurance scheme does not operate in the market, where insurers charge what they like and people have the option not to purchase if the price is too high. This is a compulsory statutory scheme: people must sign up to it if they want to build something. I agree that they would be mad to do otherwise, but when the Government compels the purchase of a product it distorts the market. The only way to make up for that distortion is to make available information that allows the Government to monitor the scheme and make supplementary legislative changes to the scheme if it is found to be either not viable or producing rapacious profits for insurers. That is the only market control.

The Hon. Dr Arthur Chesterfield-Evans: If there was an effective building inspection system there would not be so many complaints.

The Hon. JOHN RYAN: I will come to that issue. I sincerely hope that under the new scheme the Government will make sure that all insurers provide the appropriate information—similar to that which the Special Minister of State requires of the Motor Accidents Insurance Scheme through the Motor Accidents Authority. I believe that is a fair level of disclosure for a statutory scheme, and insurers should make similar disclosures before they get what they want. Insurance companies have essentially held a gun to the head of the Government and Parliament. They have said, "Either do this or we will all leave." One insurer, Dexta, announced its intention to leave the market in any event—just in case the Government and Parliament did not get the message.

I understand that in a private enterprise system we cannot force corporations to conduct business if they do not wish to do so. That is commonsense. However, we must recognise that the insurance industry has asked for and received everything it wanted. Virtually none of its requests have been knocked back. Therefore, we should at least demand of it some reports about profitability and the operation of the scheme. That is reasonable. We must check whether the industry is making good on its claims. The home warranty insurance industry in New South Wales has a tragic record of responsiveness to customers. It is not as though we are dealing with a forthright trader; this is a trader with a disgraceful record.

I know many people who made perfectly reasonable claims and who were continually pushed away by insurers. One has only to read in *Hansard* other speeches that I have made on this subject to find well-documented cases of that nature. How does this insurance package affect builders? The Government will claim that if we make the insurance scheme more viable others will enter the industry making it easier for builders to access insurance. Hurray, our problems will be solved! However, that is not what builders are complaining about. Access to the scheme is a problem but that access is blocked not because there are no insurers capable of selling builders insurance but because insurers are demanding from builders high capitalisation levels before

they will sell them insurance. This insurance insures against builder bankruptcy, and companies are now requiring builders to have such high capitalisation levels that one almost wonders why they require insurance in the first place.

Builders are required to give so many capital guarantees that many are forced to put their homes and the assets of family members on the line so that there is something for the insurance company to seize if the builder fails to fulfil a contract. Some builders cannot meet those requirements and as a consequence are charged unreasonable premiums or refused insurance altogether. That is what builders are concerned about, and this package does not address that problem. I had the pleasure of attending a meeting convened by the Leader of the Opposition, Mr Brogden, in his office that brought together representatives of the Housing Industry Association, the insurers Royal and Sun Alliance and Dexta, and other representatives of the building industry whose names and details escape me.

In fact the only major players missing from the meeting were representatives of consumer groups—we wanted to concentrate on industry players—and Elizabeth Crouch from the Housing Industry Association. We discussed the package that the Minister had announced in March. The builders complained to the insurers—there was a great cross-table discussion—that they had difficulty securing insurance because they were obliged to provide so much capital. The representatives of Royal and Sun Alliance said to the builders, "That's not what this package is about. This sort of package operates in other States and we will expect of the building industry in New South Wales the same capital requirements as are required in South Australia, Western Australia and in other States; that will not change."

Tomorrow builders will still report to us that they are having difficulty purchasing insurance. Even if this legislation were enacted right now, builders would still be invigilated by the insurance industry with regard to their capital. I suggest not that that is inappropriate but that this package is not the antidote. To find an antidote to that problem we must take some other action. For example, builders believe they are questioning figures written on the back of an envelope that they are not allowed to see. The insurers will not tell them what they require so the builders must guess. They grab a few more assets and return to the insurers and ask, "Is that enough?" If it is not, they must get a few more assets, and so the process continues. That sort of nonsense must stop.

I understand that in Queensland there is a grading process: builders with a lot of experience in the industry do not require as much capitalisation as builders who have just entered the industry. There are also special schemes that allow builders to start up in the industry, because most builders begin with no assets other than a van in which to carry their tools. If we do not help new entrants we will not have a building industry in the future. There is already a shortage of tradespeople so we should not hinder new entrants to the industry. While this package deals tangentially with the availability of home insurance, it does not solve some of the critical problems about which the builders complain.

What does this legislation do for consumers? It caps consumer benefits that currently apply in New South Wales. I shall examine that issue a little more closely. I noted in my reading of the second reading debate in another place that almost no members had latched on to the significance of this provision. References to how the deal will impact on consumers are scant but I shall ensure that the bill does not pass through this place without some detailed inquiry about that issue. Several measures will cut the benefits to New South Wales consumers. First, it will become an insurance of last resort. Under the current scheme people can make claims of their insurers at any time.

The insurer frequently referred people to other avenues, but sometimes it was possible to negotiate with the builder, for example. The insurer would help them by telling the builder to go back and finish the job, and so on. That used to happen, but it will not happen now. People will have to operate on their own by talking to their builder and begging and cajoling him to come back and finish the job properly. If they want to be a bit more ferocious they might get a solicitor to send the builder a threatening letter, and they will then have to take the builder to the Consumer, Tenancy and Trading Tribunal.

One other option that consumers had until a few weeks ago was to make a complaint to the Department of Fair Trading. The department had about 10 building inspectors, some of whom would leave the office and help these people in tangential ways, but sometimes they provided some assistance. Consumers with a building problem will now be instructed to go straight to the Consumer, Tenancy and Trading Tribunal because the tribunal wants people to access its mediation process. However, if a person buys a lemon of a motor vehicle a team of people in the Department of Fair Trading will come out and look at the vehicle, go to the trader and negotiate a settlement.

Home builders no longer have that option. This is now an insurance of last resort. After some delay consumers who have a problem will try to convince their builder to go back to the site and operate properly, then they will need to go to the Consumer, Tenancy and Trading Tribunal. If the builder is not co-operative with the fast alternative dispute mechanism the matter will be listed for hearing. That hearing will take at least 12 weeks, if not more, to reach the end of the process. Most people I know who have had to take any matter of a serious nature to the Fair Trading Tribunal and its successor, the Consumer, Tenancy and Trading Tribunal, find that it takes at least 12 months for the problem to be resolved. There is no benefit to the insurer in getting speedy service now—the Government argues you never could, even though that was the way the plan was supposed to work.

Consumers are being denied the opportunity to resolve these problems early with the assistance of an insurance company. They are on their own. In addition, they do not go to the tribunal for nothing. In most instances they will be obliged to get a consultant's report on the building, which costs about \$300—and I have seen a few that cost \$10,000. More than one report may be required, maybe not at \$10,000 each, because it is not uncommon to need a specialist engineer, a bricklayer or a number of other people with expertise in termite protection, and so on. There are then the witness expenses. Consumers have to pay those costs out of their own pocket. If it is a serious matter, they might need a solicitor. They might even need a barrister's opinion or a barrister to attend the tribunal because builders are sometimes very well equipped with such advice, and it may well be that the insurance industry will continue with its current level of generosity and assist builders in this fashion, as they have in the past.

So it is not unusual to pay \$25,000 to take a matter to the tribunal. I have to say it is not uncommon for it to cost \$100,000, and the consumer has to bear that cost. Bear in mind that the maximum payout for this insurance is \$200,000. Some people will lose their whole entitlement, or most of their entitlement, on the legal procedures involved in getting their justice, so it will be a totally pyrrhic victory. After this legislation is passed, for many people who have a rotten builder the most efficient and least expensive option will be to bulldoze what the builder has done, hire a new builder and get a new life. If people think they can have a free \$200,000, that is not quite true. There is another cap that covers the event of the builder leaving the site. If a builder leaves the building site the consumer is limited to 20 per cent of the contract price, as the insurer's exposure is 20 per cent of the contract price.

For most average building contracts that means they will have available to them about \$30,000. Remember that this is insurance of last resort. If it costs consumers \$25,000 to take the builder to the tribunal to get a judgment in their favour, which the insurer will honour, and then the builder goes bankrupt, dies or disappears—and that can happen—they might lose all the value of their insurance because it will be taken up by legal costs. In order to give this legislation teeth people may only make a claim against home warranty insurance in the very unlikely event that the builder dies, disappears or becomes insolvent. I have asked, but have not yet received an answer to the question: What if the builder loses his building licence? Six builders last year had their licences suspended by the director-general of Fair Trading. What happens under those circumstances? I would have thought that would be a reasonable case for a claim against insurance. At the moment consumers would have to sue the builder for whatever assets they could get.

What would happen in the highly likely event that a builder—although licensed and solvent—belted up a family member, as sometimes happens in these circumstances. Some shonky builders have threatened home owners. If the owners do not want the builder to come back on to their property because of his conduct or behaviour, what do they do? They are stuck with that. This is important, because when we were going through the exercise of passing reforms to the Consumer, Trading and Tenancy Tribunal and the Home Building Act last year, the then Minister for Fair Trading, the Hon. John Watkins, told me that one of the next stages of the reform would be to examine the regulations that pertain to home building insurance and tighten up the provisions that trigger the opportunity to make an insurance claim, and to look specifically at what happens when the insurer becomes unlicensed or is no longer able to come to the home because of his conduct or some other issue. That is one issue that I believe needs to be investigated by the committee when it hears evidence, because home owners are really going to be left in the lurch.

The Government says these are not problems because this scheme operates in other States, but I will bet my bottom dollar that there are consumers with these problems in other States whom we do not know about. All that needs to happen is for us to perhaps advertise and they will come flocking, and we will discover the downside of this scheme as it operates. At the meeting in Mr Brogden's office inquiries were made as to the current cost of an insurance premium. It costs about \$800 to insure the average project home in Sydney. That is an increase of nearly 50 per cent on what it was about two years ago. I asked the question: "When they cut these benefits, will you be reducing your premiums?" The answer was, "No. We might review them in 12 months time but we believe that the current scheme is only viable at those rates of premium if these laws are introduced."

In 1995 people had the protection of the Building Services Corporation—such as it was—and I think they paid a nominal insurance policy. The Government introduced this grand plan in 1995 to privatise the scheme, and premiums have gone through the roof and the benefits have been reduced to almost nothing. There will be almost no opportunities for people to make claims under this scheme. We have given insurers a very lucrative new area of activity, and consumers have been virtually hung out to dry.

[Debate interrupted.]

DISTINGUISHED VISITORS

The PRESIDENT: Order! I have great pleasure in welcoming to the President's Gallery Ms Sylwia Pusz, a member of the Polish Parliament.

HOME BUILDING AMENDMENT (INSURANCE) BILL

Second Reading

[Debate resumed.]

The Hon. JOHN RYAN: Insurance premiums will not be reduced even though the benefits have been cut. That alone should justify the inquiry. We should summon representatives of the insurance industry and ask them why. If it is good enough for the motor accident insurers to appear before the Standing Committee on Law and Justice when their scheme is being reviewed, I have no guilt in asking the companies providing this type of insurance to appear before that committee to account for why premiums should not fall given that the benefits have been significantly reduced. The current scheme provides for building constructions to be insured according to warranties available in the Home Building Act. They are too complicated to explain now but members can read them for themselves. The building should be carried out in a workman-like manner and with materials that are suitable for the purpose for which they are intended. The building should also satisfy the purpose for which it was intended and so on.

Policies under the current scheme guarantee those warranties for seven years. This bill defines a building in terms of structural and non-structural items. Non-structural items will be guaranteed for two years; structural items will be guaranteed for six years—a reduced period. It is reasonable for us as legislators to ask why six years was picked. Will this mean that reasonable claims that could have been made against the current insurance scheme cannot now be made? When people build a house they expect that its essential elements will last a good deal longer than six years. I have no doubt that the most litigated section of the legislation will be section 57AC (1) (b), which refers to the meaning of "structural defect". The crucial line is anything which "prevents, or is likely to prevent, the continued practical use of the building or any part of the building". It will be endlessly investigated by lawyers trying to work out what is in and what is out.

In order to brief Mr Debnam in another place on the impact of the bill I made a little list of items off the top of my head. I have not been able to do research on this matter but I tested the list on representatives of the Department of Fair Trading. I was reasonably satisfied that I had stumped them in their capacity to provide immediate answers. People will want to know whether these types of items are covered or not covered. If there is a problem with the front door jamb the home owner might be able to come and go and continue living in the house, but would it be a structural or non-structural defect not to be able to lock the House? How would it affect the owner's practical use of the house? There would still be access to the house and the building would still keep out the rain. This is the sort of thing that could be expected to break down after a period. The frame may have warped in the rain and the builder may deny responsibility. What about windowsills and window fittings? Are they structural or non-structural? We have no idea. They might be guaranteed for two years. If the rain pours in through the window, is that a structural or non-structural matter?

The Hon. Henry Tsang: Non-structural.

The Hon. JOHN RYAN: Well, I do not know. At the Joint Select Committee on the Quality of Buildings I asked representatives of local councils: Would you like to define the difference between structural and non-structural works? The answer I received was, "I would hate to be in a position of deciding what was in and what was out."

The Hon. Dr Arthur Chesterfield-Evans: There will be precedents in a few years.

The Hon. JOHN RYAN: There will be plenty of precedents, which will have been expensively litigated, no doubt. In the Fair Trading Tribunal or its successor people may be subject to the whim of the presiding member on the day. They do not publish many of their decisions. Consistency has not been a feature of the Consumer, Trader and Tenancy Tribunal. A plumbing problem might arise that is not as a result of the pipes. There could be debate about whether it was caused by a root growing through. Is that a structural problem? One of the most common problems in homes is leaky showers. Is that a structural problem, particularly if it is in the bedroom ensuite? Does that prevent the owner from practical use of the house? Probably not, so it might be non-structural.

We should know what sorts of things will be in and what sorts of things will be out. Some things are obvious. If we are going to limit claims on the floor slab, roof joists and framework of the house to six years, I want to know why that period was picked. I understand that it was the lowest common denominator of what operates in the other States. That may not necessarily be the right sort of level. There is an argument that some features of the house ought to be guaranteed for longer than six years and others for shorter periods. The Government and the insurance industry would argue that there needs to be a limit. I understand that long-tail business is very expensive to underwrite. But we should not prohibit reasonable claims and the guidelines for claims should be reasonably clear so that we will not involve consumers in very expensive arguments which will eat up the value of their insurance policies.

Cover is limited to \$200,000 for the whole house—the current limit—but only 20 per cent of the contract price if the building is incomplete. The scheme is supposed to cover people for the last instalment they have paid for the construction of the house. But many people will find the litigation to resolve whether they are entitled to a claim eats up the amount of money available. An additional problem is that very few builders will be interested in completing another builder's work at the same price the previous builder agreed to provide it for. The cost of completing a house will increase simply because builders do not want to finish someone else's work. They do not want to take the risk of building on top of someone else's work. The second builder probably would have to take out a second insurance policy to cover the building because the previous policy would have been exhausted. I have rulings of the Fair Trading Tribunal—I do not have them with me—that show that it may even be necessary for builders to do that. So an additional cost will be involved.

I have not seen this flashed across the pages of the *Sydney Morning Herald*, but the new scheme cuts the benefits to households and consumers very significantly. I think the Government is trying to sneak this through Parliament without telling people what is going to happen. They will start to discover this long after the horse has bolted and it is too late. A committee would at least have the opportunity to make that information available to the public so that the public will at least know what they will get. The Opposition does not believe that the bill deals with the problems that home builders have had in getting access to insurance. We are concerned about the reporting and service standards required of insurers.

Finally, we are concerned about the detail—because the devil is in the detail—of how it will impact on consumers. When we were reforming various aspects of consumer protection related to the home building industry at the end of last year it was explained to me in detail that this was a package in which all the various bits fitted together to make a consistent whole. Now we are changing one of the bits very significantly and seriously, against the interests of consumers. I need to be sure that the rest of the package still holds together and provides adequate cover and protection for insurers. The Government may claim that the regulation of the building industry is complete. We are now licensing and supervising builders much more rigorously and the Consumer, Trader and Tenancy Tribunal is dealing with these things a great deal faster.

In preliminary evidence to the Joint Select Committee on the Quality of Buildings representatives from the Fair Trading Tribunal said that only 20 per cent of matters currently dealt with by it are getting speedy treatment and that everything else is proceeding through the tribunal at the same level of attention it previously got under the old the scheme. In my view that 20 per cent should be discounted for a very important factor: some people who go to the tribunal for speedy service, and are getting it, formerly went to the Department of Fair Trading where they also got it. So it is highly likely that all the matters that used to go to the old Fair Trading Tribunal are being treated in pretty much the same way as they always were under the Consumer, Trader and Tenancy Tribunal Act.

That means that not much has changed. We said that things would change, but not much has changed. When the scheme offers insurance as a last resort, it is enormously important whether that part of the deal has worked properly. It is important to take the whole package into consideration, because one component affects another. The licensing of builders is also an important consideration. Yesterday I reported to the House that a

builder about whom I used to complain, Rocco Vitalone, has finally lost his building licence, but for only 18 months. I cannot tell members what it would have cost the Department of Fair Trading to achieve that result. If that is an example of how rigorously the building industry is being supervised and pursued we are up against it!

I would like some detail from the Department of Fair Trading as to how effective its new regime, modest though it is, impacts on the building industry to make sure that the bad builders are being cleaned out. I have a feeling that the new regime might be about as effective as the consumer tenancy tribunal in changing things. I recognise that the change in the environment in the home building industry is difficult for consumers, it is hard work, and is something that I have been engaged in for some time. But changes needed to be implemented, and done so openly. For that reason, the Opposition does not oppose the bill, although I might have a different feeling. The Opposition certainly wants full, public disclosure of all aspects of the bill and an opportunity for all the parties who are concerned to come before an upper House committee and to inform it how the bill will work. In addition, we want the opportunity to interview members of the Department of Fair Trading and the Fair Trading Tribunal and have them tell us their story.

Reverend the Hon. FRED NILE [4.32 p.m.]: The Christian Democratic Party supports the Home Building Amendment (Insurance) Bill. We acknowledge that there has been limited time to consider the bill, but we recognise that this is basically a rescue package in an emergency situation. The bill contains a number of reforms that were announced by the New South Wales and Victorian governments on 13 March. The reforms were urgently agreed upon by both governments and were worked through with the insurance companies. That resulted in this bill being introduced into Parliament. It is recognised that all insurance areas, including workers compensation and motor vehicle accidents, are complicated. Discussing those matters with insurance companies and obtaining actuarial reports takes some time. Some members may think that this bill should have been introduced some months ago, but the complex nature of insurance involves a lot of negotiation and discussions before a final agreement can be reached.

As we all know, an emergency situation followed the terrorist attacks, initially in New York on September 11 which resulted in the destruction of the Twin Towers of the World Trade Center. That involved billions of dollars of insurance coverage. I understand that extra billions of dollars are needed for the restoration of the site so that it can be used for new buildings. That destruction hit the world's insurance industry like an earthquake, because all policies are tied together through reinsurance, and so on. The collapse of HIH Insurance also affected the insurance industry. The inquiry into that collapse regularly features on the front pages of our newspapers. We are all staggered at how some of the decisions were made involving FAI insurance and other companies, which appeared not to have a basis in reality. FAI and HIH provided a lot of building industry insurance, and it has been said that their rates were too cheap and that is part of why they became bankrupt. That may or may not be the case. Extra pressure was applied after 11 April when Dexta announced that it would not provide any further cover in the home building insurance area.

Other insurance companies are under threat, although some are seeking co-operation from other insurance companies, because they can just walk away from insurance areas. The uncertainty and risks do not warrant some companies being involved in certain areas, and we could finish up with no insurance companies providing insurance in a particular area. I wonder whether the GIO should have remained as a government agency because, as the Hon. John Ryan hinted, in this area of uncertainty with high premiums, and insurance companies professing that they have financial problems, they in fact have larger profits. No-one really knows. If the GIO were still in operation, a comparison could be made on the risks, premiums and payouts with private insurance companies. The Government must keep insurance companies involved in this area, and provide some guarantees of capping payments. That is now occurring in every area, following the large awards in some areas. This bill will provide that the amount of cover for defective work will remain at \$200,000. That is a key aspect of the legislation. That amount will include cover for such reasonable legal and other costs as may be incurred by the claimant in seeking to recover compensation from the contract.

The bill provides the following reforms: home owners will be able to claim against their policy as a last resort—that is, where the builder is dead, has disappeared or is insolvent; and insurance will cover structural defects for six years and non-structural works for two years. I can understand the need for a time limit but the majority of new home buyers, especially young married couples, take out a mortgage for 25 years. Their insurance will cover structural defects for up to six years only. The bill provides for claims relating to incomplete work to be limited to 20 per cent of the contract price for the work; alternative indemnity schemes and other arrangements may be approved. I note that the Government has left an option which is important, although it does not provide for a Government insurance office but is providing some opportunity for the Government to work in partnership with insurance companies. The bill contains an enabling provision under which, if appropriate, the Building Insurers Guarantee Corporation may be used as a vehicle to administer any reinsurance or other arrangements which may be put in place by the Government.

I support the referral of the bill to the Standing Committee on Law and Justice for review. A condition of the referral was that the bill be proclaimed and enacted, otherwise insurance companies might think we have given them one thing in one hand and taken it from them in the other. The only danger is that some of the amendments may drastically change the basis of the reform package. If the law and justice committee recommends any amendments I hope they will not cause insurance companies to pull out of the agreement. I have had this discussion in other committees in which I am involved, particularly as it relates to workers compensation. These things are very sensitive and when an agreement is reached on a certain basis even the slightest drift in another direction could change the whole basis on which actuaries assess the risk. The law and justice committee must bear that in mind when it reviews the legislation. Any amendments should be delayed to allow the legislation to operate for, perhaps, 12 months. We will not solve the problem if we start chopping around and present a half-hearted situation. We support the bill as part of a rescue package. We recognise the atmosphere of urgency and, therefore, accept the short notice on which the bill was presented to both Houses.

The Hon. IAN COHEN [4.42 p.m.]: I have a degree of concern about the bill. I have listened with interest to other honourable members. The report from my assistant who is looking into the matter is that people are shocked that the legislation is being debated today. There was very little time to discuss it and people are not aware of exactly what is going on. We rang the Building Assessment Review Group [BARG]. Mrs Irene Onorati burst into tears when she realised that the legislation was in this House today. I concur with the overwhelming amount of material that the Hon. John Ryan put before the House. I have been listening and talking to people from BARG for some time. They have been in the Parliament and visited various honourable members. It is an honest group of people. It is tragic to think that these people are the victims of events such as September 11 and the collapse of HIH.

Corporate irresponsibility is encouraged by governments of both persuasions. We often hear about the waste and the resultant crash as a result of too many parties, too much luxury, too much irresponsibility and lack of accountability of the organisation. This massive collapse is now reverberating throughout the community. It is tragic that vulnerable people who set out to make the major investment of their lives, to build or renovate their homes, are held to ransom by private insurance companies in concert with this Government. Certainly, things have turned full circle, and it is a sad state of affairs. How did we ever lose the Government Insurance Office? How did we ever lose the Commonwealth Bank from public ownership? This is the sort of thing that comes back to haunt us.

When private enterprises take over where do they shaft the responsibility? They are slashing their benefits. It is absolutely devastating. It is appalling. It is like *Faulty Towers*, but that is Parliament and that is how we are working. It is sad to note that the bill has come through the Department of Fair Trading. I agree that it is appropriate to send the bill to the Standing Committee on Law and Justice, but it is too little too late. The HIH collapse and September 11 were the beginning of the collapse of the home warranty insurance scheme. Before HIH collapsed there were five insurers. It was then reduced to four: Dexta, Reward, Royal and Sun Alliance, and HIA.

Earlier this year Dexta, which insures around half the industry, announced it was pulling out of writing policies for a high-rise project. Later it announced it was pulling out of the home building sector altogether because its European re-insurers, which had underwritten the commercial risks, no longer wanted a stake in the Australian market. The company would honour its 6,300 New South Wales policies, but would write no more. What does this mean at a practical level for builders and consumers? First, builders insurance premiums have risen dramatically, and they are facing more onerous conditions. One builder said his premiums have risen threefold, from \$500 to more than \$1,700. Another builder paid an insurance premium of \$5,000 and got around \$7.5 million in cover.

Last year the same builder was told that he would get only \$2.5 million and he would have to provide a \$500,000 bank guarantee. Many builders are being told that they have to put their personal assets and homes on the line to gain insurance. Some builders have stopped working altogether, others are building illegally without insurance. As building works come to a standstill, builders are laying off staff and subcontractors. Many jobs are being lost. More than 200,000 construction jobs are at risk and up to \$9 billion in home-building work is under threat. However, there are some very negative aspects for consumers in the legislation. Under the old system when you sign a contract with a builder for a new house or renovations worth more than \$5,000 the builder must have home warranty insurance.

A person can make a claim if there is any problem with the building work, including contractual problems and the death, bankruptcy or disappearance of the builder. A person can claim for up to seven years

after the job is completed and a maximum of \$200,000. Under the new system the Government is stepping in as a guarantor, an insurer of last resort. It is acting as the re-insurer to ensure that companies such as Dexta stay in the market. However, there will be significant reduction to consumer rights. For example, the insurance will cover structural defects for only six years and non-structural defects for two years, claims relating to incomplete work will be permitted to 20 per cent of the contract price of work and the threshold is reduced from \$5,000 to \$12,000, which will eliminate small claims. Thus, for work under \$12,000 no insurance will be necessary. The last resort provisions are introduced only where insurance is triggered if the builder is dead, is insolvent or has disappeared and, therefore, is unable to complete or rectify building work.

On the one hand, builders must have home warranty insurance. Yet insurance companies either will not insure them or will force them to put their homes and assets on the line, to lay off employees and to cancel subcontract work. On the other hand, consumers rights will be significantly reduced. It is a no-win situation, and insurance companies, which are concerned about profits, seem to be leading the charge and driving the situation. As I said earlier, this is another area where the economic rationalists hold sway. Everyone is regarded as a figure and a sum of money. The present situation provides an opportunity for the Treasurer, with his ample funds in Treasury, to consider buying back the insurance companies and recreating the Government Insurance Office. This is a classic case of the Government kowtowing to the insurance industry. Yet again people are suffering and members of this House are virtually powerless to do anything about it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [4.50 p.m.]: I speak against this disappointing bill. If we were to look for a reason for the attitude of young people in Australia to politics and the fact that people generally consider this House as irrelevant, we could not find a better example than this bill. The Government has created a poorly regulated industry. It gave away its insurance company and is no longer a player in the market. We are now dictated to by reinsurance companies in Zurich. Such companies affect the behaviour of insurance companies in New South Wales, and the Government tamely goes along. In this globalised world, the people who regard this House as irrelevant would also regard the New South Wales Government, with its economic rationalism over a period of years, as irrelevant. As was pointed out by the fool in *King Lear*, one has as much power as one takes and if one gives away one's power then one no longer has any. The stopgap measures in this bill—which interestingly does not have a sunset clause—are a logical conclusion to the Government's previous actions and inactions, which were often supported by the Opposition.

I congratulate the Hon. John Ryan on his excellent speech. The Hon. John Ryan does not set Coalition policy. More is the pity. He is more than welcome to become a member of the Australian Democrats. He is the sort of person we need—and I do not say that to many people. He understands the building industry and the problems of home builders who are affected by the building industry and building insurance in New South Wales. He has seen the heartache of people who have been affected by building problems. Notwithstanding the silly interjections from the Government, the House should be dealing with the issues he raised. Our job is to look after the citizens of New South Wales. Reverend the Hon. Fred Nile and the Hon. Ian Cohen spoke about the Government giving away the GIO. If the Government is a player in the market, it can dictate to the market. It sets a price that enables it to continue trading in a solvent manner and with a reasonable margin. Other players will have to meet that price, which will then pull down the market to a level that is reasonable for consumers.

If a government-run system is marginally inefficient, perhaps that inefficiency will correspond with the profit levels of more optimally managed companies and the two can coexist. I believe that is how the system worked previously, until the Government decided it could make more profit and raised its premiums to the level of the market. Effectively it created a private company. The Government was not content with having a lower profit margin but also the capacity to control the market by reigning in profits. It wanted to kill the goose that laid the golden egg. It wanted to make a quick buck and "away we go". The problems in the insurance and the banking sectors are the result of the economic rationalist perspective of the short-term dollar overlooking the long-term obligation to the people of New South Wales. The Australian people have been ripped off as governments divest themselves of their concern for consumers. Governments assume that the market, which often is an oligopoly, will look after consumers.

The problem in the building industry is also an example of what happens in a poorly regulated market. The lack of a proper inspection and builder exclusion systems means that plenty of shonky buildings are being built. Many high-rise towers in the city do not comply with fire regulations because the inspection system was privatised by this House, against the advice of the Australian Democrats. Dare I say, we told you so! We told the Government and the Opposition that privatisation would result in a poor inspection system. Now there are high-rise towers in the city, which are occupied, that do not meet fire regulations and do not have council approval. I have asked for a list of such buildings. Although I have not yet received a response to that request, since my

request the Council of the City of Sydney has prosecuted Meriton for non-compliance of some of its buildings. Perhaps the council thought it would look foolish if it provided a list of those buildings, which have been occupied for some time but do not comply, but did not take any action. I do not know if I can claim credit for that action, but I would not be surprised if that were the case. Perhaps the council would have acted anyway because attention had been drawn to the number of buildings that did not comply since the introduction of the private inspection system.

Poor building accreditation systems have resulted in a great deal of claims, which have then pushed up the cost of premiums. There is also the human suffering associated with shonky builders, builders abandoning houses half way through the building process, buildings being completed and then found to be structurally unsound. Who pays for the demolition and rebuilding? Often the house owners cannot prove their cases and never get their money back. They lose their entire life savings and use all their earnings to pay off mortgages. And marriages and families suffer as a result.

All the problems are blamed on the collapse of HIH Insurance and the terrorist attacks on the United States of America. Because a plane flew into a building in America we cannot get insurance in New South Wales. The cost of public liability premiums has risen exponentially in every facet of Australian life. In any sort of rational framework one could not seriously believe that a plane flying into the World Trade Center in New York would change the likelihood of a builder doing a shonky job in Western Sydney. That is not a logical cause and effect. If cool heads were running the insurance companies the premiums would reflect the costs involved and the likelihood of problems occurring in New South Wales.

If the GIO were a functioning unit that was managed by the Government as a company that earned a reasonable return for a reasonable risk, I believe that the terrorism that occurred in New York would not have affected the reinsurance industry here in New South Wales. However, the industry worldwide has not sorted out its response to the September 11 act of terrorism. Australia is 2 per cent of the world market and because the reinsurers were unsure of what to do they have simply put their premiums up generically. The companies in Australia have then left the market because those raised premiums have squeezed their margins. Those who understood what was happening in Australia would have realised that the risk of losing money because of the actions of builders had not substantially changed. Therefore, if there was a large backer, such as the New South Wales Government, the reinsurers would be able to accept the risk knowing the cost structure of the premium.

I believe this crisis has been caused by the sale of the GIO and the extraordinary haste with which all the large parties in Australia have embraced economic rationalism and flogged off assets that they should not have flogged off. Another major factor has been the lack of a meaningful regulatory system, and this has allowed claims to rise. The same situation applied at the time of the sale of the Commonwealth Bank, which was set up during the Depression to stop banks profiteering but which was sold off for a quick buck. Everyone complains about banks, which, funnily enough, make huge profits.

The Hon. John Della Bosca: It was set up after the war.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is historically correct but, nevertheless, it was set up in order to have a player in the market so that the profit level could be looked at in the light of public interest. In a sense this situation runs parallel to the workers compensation system in which we have, on world standards, poor prevention but high injury rates and poor case management by WorkCover. The Government's solution is not to fix the other two problems but to decrease benefits.

The Hon. John Della Bosca: We have increased benefits.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is complete nonsense and the Minister knows it. The Minister has increased benefits for the few who get through the selection process of his absurd AMA guidelines, but the net payout has dropped. The Minister introduced those guidelines. Self-insurers in workers compensation continue to perform at 30 per cent to 50 per cent of the WorkCover premiums, thus proving what can be done with competent case management, yet even that example is ignored. The building industry also experiences poor enforcement of regulations. Many claims are made because of shonky buildings, resulting in higher premiums. As we do not have any companies we are at the mercy of reinsurers in Zurich, who do not look closely at what is happening in Australia. Therefore, the solution has been to cut benefits.

I have not spoken directly to Irene Onorati, who either the Hon. Ian Cohen or the Hon. Richard Jones described as being in tears once again. Through the Building Action Review Group she has struggled to get a

better deal for people who have been ripped off. My office receives considerable correspondence each week from people in desperate circumstances seeking to recoup their money or seeking some redress from dodgy builders. This bill is an attempt to ensure that the three companies that provide home warranty insurance in New South Wales, Dexta, Royal and Sun Alliance and Reward, will not leave the market as this would have an adverse effect on the home building industry, which contributes \$8 billion per quarter to the national economy and employs 710,000 people. Currently, despite all the gloom with insurance, the home building industry is booming, partly because of low interest rates—although because of this problem some people are not building.

In order to placate the insurance industry, on 17 April the Government announced that it will effectively underwrite the industry for what some insiders conservatively estimate will be \$10 million of taxpayers money, as reported in an article in the *Sydney Morning Herald* of 17 April entitled "Taxpayers to prop up home insurers". The bill will implement a new warranty scheme for residential building works and the supply of kit homes entered into at the commencement of the Act. The conditions of warranties currently in force will be unaffected. However, contracts entered into after the commencement of this Act will be subject to the new scheme.

The details in the second reading speech are very sketchy, and that is of concern. We have been told this legislation must be passed because of pressure from the insurance industry. Indeed, the insurance industry has assured the Government that everything will be okay. More detail on this subject has been provided in adjournment speeches than was given in the second reading speech of the Minister in the other place. The bill limits the period of home building insurance cover for structural defects from seven years to six years. It makes provision for home warranty companies to cap liability for non-compliance with contractual obligations at 20 per cent of the original contract price. I consider that cap and the \$200,000 limit to be a bit tight. Indeed, a person who was building a large house has said, "We would rather not take out that insurance but put the money into supervision or legal aid when the contract is first drawn up and I think we will be better off."

Clearly, the bill is merely a bandaid measure. If the legislation is urgent, why does the bill not contain a sunset clause? I note that an amendment will be moved to refer the bill to the Standing Committee on Law and Justice. I should have thought it would have been preferable to have it referred to a legislation committee before it was enacted. It is rather like putting the cart before the horse. Once again, this is legislation on the run, but this Government does many things on the run. It is another example of why the Government does not deserve the respect of the people. It has not considered the matter in the long term. Rather than bite the bullet and put in place a regulatory system and an insurance company that is effective in the market, in a crisis the Government has bowed to this powerful lobby group. I have no choice but to oppose the bill—and I do not say that with any joy. I would have preferred to say that the matter has been managed competently and that this is good legislation that will benefit the community. However, that is not the case and, therefore, I oppose the bill.

The Hon. Dr PETER WONG [5.08 p.m.]: We all know too well, with the collapse of HIH and the events of September 11, that the insurance landscape has been altered forever, and the home warranty insurance industry is very much affected by this new landscape. This bill is the Government's response to concerns that home warranty insurers may not be able to continue offering insurance to home builders. Dexta, one of only three home warranty insurers in Australia, has already withdrawn from the market. The concern that I have is the speed at which this bill has been rammed through the House. I do not dispute the importance of the issue; however, legislation on the run, regardless of how good the intention may be, might ultimately result in bad legislation.

We need to consult widely, and from the debate so far it seems there has been extensive consultation with insurance companies but limited consultation with consumer groups, which are very much affected by this legislation. Indeed, this bill seeks to support home warranty insurers by limiting consumer rights and entitlements. My major concern is that this legislation will limit claims relating to incomplete work to 20 per cent of the contract price for the work. I am sure most members of this House would have heard nightmare stories from families affected by what can only be described as dodgy builders.

However, we are considering limiting claims to just 20 per cent for unfinished work. At present consumers are covered for structural and non-structural defects for up to seven years but this legislation seeks to reduce the cover to six years for structural defects and to just two years for non-structural defects. How can we think this through? The bill passed through the other House only yesterday and we are now being asked to pass it in this place today. Are we moving too quickly? The Minister said in his second reading speech in the other place that the bill was necessary but then offered little substance in support of his argument.

Crossbench members have not been briefed about the rationale for many of the measures in the bill. For example, how did the Government arrive at the 20 per cent claim limit for incomplete work? Why does the bill

introduce structural and non-structural components to the cover? Why is cover for non-structural defects reduced from seven to two years? Why not four or five years? The Government is asking us to trust it but it has not provided sufficient information to support its argument. The Government's main argument seems to be, "If you don't support this bill the industry may collapse into a crisis." However, I am concerned about consumers. As I said earlier, I believe making policy on the run is dangerous. However, making policy on the run without comprehensive consultation with all groups affected is even more dangerous. Without the Government's rationale for why it has moved in this direction and how it has arrived at the limit provisions in the bill, it would be irresponsible to pass this legislation. For those reasons I oppose the bill.

The Hon. RICHARD JONES [5.11 p.m.]: I am unable to indicate whether I support or oppose the Home Building Amendment (Insurance) Bill as I have not had the chance to gather any information about it. I contacted various organisations such as the Public Interest Advocacy Centre, the Sydney Building Information Centre, the Home Seekers Co-operative Housing Society and the Building Action Review Group. Irene Onorati said she had not received a copy of the bill, which she thought was despicable. She said, "There's no-one to look after us and I'm broken-hearted they don't consult with us. Please don't let it pass until we've had a chance to look at it." That will not happen because the bill will be passed this afternoon.

I have been advised by Julie Heraghty that this legislation is similar to the package that was announced in March and is not as troublesome as we feared. However, we need more time to look at the details of the legislation and to consult the people whom we normally consult. I am disappointed that the bill has been rushed through Parliament so rapidly and that we are not able to judge its likely impact and whether it is the same as the package announced in March. I will not oppose the bill, but I hope that the Standing Committee on Law and Justice will examine it closely and that people such as Irene Onorati will ask many questions in relation to it. I hope that the legislation will have no unforeseen consequences, but at the moment I simply do not know.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.12 p.m.], in reply: I thank honourable members who have contributed to the debate, especially those who accepted that this legislation is urgent—although that is not an easy path to take politically. I assure honourable members that the commitments and undertakings given by the Minister to community representatives and to members of this and the other place will be upheld. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

Third Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.13 p.m.]: I move:

That this bill be now read a third time.

The Hon. JOHN JOBLING [5.15 p.m.]: I move:

That the question be amended by the addition of the following paragraphs:

2. That the provisions of the Home Building Amendment (Insurance) Bill, as passed by the House, be referred to the Standing Committee on Law and Justice for inquiry and report, together with the impact of the bill on:
 - a) home warranty insurance,
 - b) home builders,
 - c) consumers.
3. That the Committee report by Thursday 5 September 2002.
4. The reference of this bill to the Standing Committee on Law and Justice is in no way intended to constrain the commencement of the bill at an earlier date.

Amendment agreed to.

Motion as amended agreed to.

Bill read a third time.

BAIL AMENDMENT (REPEAT OFFENDERS) BILL**Second Reading**

Debate resumed from 7 May.

The Hon. HELEN SHAM-HO [5.18 p.m.]: I support the Bail Amendment (Repeat Offenders) Bill, which seeks to amend the Bail Act 1978 by removing the presumption in favour of bail established for accused persons in a number of specified circumstances, regardless of the type of offence that they have committed. New section 9B will remove the presumption in favour of bail when an accused person commits an offence while he or she is on bail or parole for another sentence, is serving a sentence but is not in custody, or is subject to a good behaviour bond in relation to another offence. The bill removes the presumption in favour of bail when an accused person has been previously convicted of the offence of failing to appear before a court in accordance with a bail condition, or when a person is charged with an indictable offence and was previously convicted of one or more indictable offences.

The bill's second major reform is in item [4] of schedule 1, which seeks to clarify the criteria that must be considered by the courts when a bail application is made. According to this new section the magistrate must consider whether an accused person is a juvenile offender or has an intellectual disability when determining whether bail should be granted. He or she must also consider the nature and seriousness of the accused person's prior criminal history, including the number of offences, the length of time between those offences, and the length of time between those offences and the charges for which the offender is appearing and seeking bail.

Honourable members may know that this is not the first time that the Bail Act 1978 has been amended to restrict the circumstances in which an offender has a right or presumption in favour of bail. In 1987 the Act was amended to exclude domestic violence offences, and in 1993 the presumption of bail was removed for murder. In 1988 a presumption against bail was introduced for certain drug offences. In 1998 a series of amendments was introduced to tighten the bail criteria in relation to serious offences of a violent or sexual nature. Those amendments require a court to consider whether a person is likely to commit another serious offence while released on bail and whether a person who commits a serious offence was on bail or parole at the time that the alleged offence was committed. However, the bill that is before us today is very different from previous reforms. This bill focuses on the offender rather than on the offence.

The many amendments to the rules of bail, including this bill, have all been driven by the same overriding concern, being the need to protect the community and the alleged victims of the crime from further violence that may be committed by the accused while on bail. Community safety has always been the key. Whether or not this Parliament should restrict an accused person's right to bail is a very serious question that deserves careful consideration. When examining any system of bail two competing philosophical considerations must remain foremost in our minds: On the one hand, there is the right of the accused person to be presumed innocent until proven guilty; on the other hand, there is the need to keep the community safe from harm.

These philosophical considerations are further complicated by practical concerns such as the size of the remand population, the economic cost of increasing the remand population, and the impact of changes to bail on the vulnerable members of society. With all questions of this kind, as the legislator it is incumbent upon us to weigh up the conflicting arguments and strike the appropriate balance. The presumption of innocence is the fundamental premise upon which our entire criminal justice system rests. It is also the premise that underpins the very concept of bail. I note that the importance of the presumption of innocence was highlighted in the report of the New South Wales Bail Review Committee in 1978 and was reaffirmed by the then Attorney General, The Hon. Frank Walker, MP, in his second reading speech on the 1978 Act. The Minister said:

The liberty of the subject is one of the most fundamental and treasured concepts in our society.

The right to be presumed innocent until proven guilty is also enshrined in the United Nations Universal Declaration of Human Rights. Article 11 of that Declaration states:

Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

As a lawyer who has represented people in criminal matters, I am adamant that we must preserve the presumption of innocence in criminal cases. It has been described as the golden rule of our entire criminal justice process. Without the presumption of innocence any notions of fairness or justice simply fall away. But as

I said before, this must be balanced with the interests of victims of crime and those of the community in bringing an accused person to trial. The community has a right to feel safe and to be protected from continuous offending.

I am aware that recently the issue of bail has been a major community concern in this State, and rightly so. According to the Bureau of Crime Statistics and Research, 10 per cent of all offenders account for 30 to 40 per cent of crime. Yet less than 5 per cent of offenders appearing before the Local Courts are refused bail. It is reasonable to assume that these offenders are likely to continue to break the law before they are brought to trial. Repeat offenders are also notorious for not turning up to court. For example, the Bureau of Crime Statistics and Research estimates that one in four offenders granted bail for break, enter and steal offences—a common repeat offence—fail to comply with their bail conditions by appearing for trial. These statistics are alarming.

I do acknowledge that this bill has the potential to swell the remand population in New South Wales. The Premier and the Department of Corrective Services have predicted that the remand population in this State—which incidentally is already the largest in Australia—will increase by 800 over the next two years if the bill is passed. This is an increase of about 50 per cent of the current remand population. We also need to remember that the additional limitations to the presumption in favour of bail introduced in 1998 have already resulted in significant increases in the remand population. There were approximately 1,200 people on remand before the 1998 amendments took effect. As at 24 March 2002 there were 1,668 people on remand in New South Wales. Currently, over 20 per cent of the New South Wales prison population comprises accused persons on remand.

Court delays will also increase if this bill is passed. Hearing delays will escalate because of the inevitable rise in the number of prisoners on remand due to the bill. The length of time that remanded prisoners remain in custody will also be extended. I note that the Government has estimated that the cost of expanding our gaol capacity to cope with the increase in the remand population will be \$135 million over the next two years. This is in addition to the \$80 million already allocated for the proposed Kempsey correctional centre and the \$90 million for the new prison in the central west of New South Wales. For our purposes the question must be whether or not this money is being well spent. When the economic costs of the bill are compared with the economic costs to society of continual reoffending, I think the answer becomes clear. You cannot put a price on community safety.

While I do not oppose this bill, I do have a number of concerns with its practical operation. In particular, I am concerned that the bill will have unintended consequences by applying to people who are not actually repeat offenders. I also feel that the bill does not adequately consider the impact of incarceration on mentally ill persons. My first concern in relation to this bill, which I note has also been raised by the Law Society of New South Wales, is that the bill will be applied to accused persons who are not actually repeat offenders. In his second reading speech the Attorney General, the Hon. Bob Debus, stated in the other place that the bill is "designed to target repeat offenders at the bail stage". However, in practice, this bill may catch out people who have had a lengthy period of good behaviour and do not have a continuous pattern of offending behaviour. This is because the bill fails to take account of the mitigating time factor between a previous conviction and the current charge.

I foreshadow that I will move an amendment in Committee to remedy this situation. I am pleased that item [4] of schedule 1 inserts further criteria that must be considered by a court in bail applications. If the accused person is under the age of 18 or has an intellectual disability, the court must consider any special needs of the person arising from that fact when determining whether or not to grant bail. This section must be read with proposed section 36 (2A), which seeks to allow a court to also consider the appropriateness of bailing an accused person of Aboriginal or Torres Strait Islander background to supervised bail accommodation, rather than prison. This provision is to be welcomed given the gross overrepresentation of Aboriginal and Torres Strait Islander persons in custody. It is also in line with the recommendation of the Royal Commission into Aboriginal Deaths in Custody that states that gaol should be a last resort for Aboriginal persons in custody.

These sections of the bill are obviously geared towards protecting the vulnerable members of our community. My concern is that mentally ill persons have been excluded from the definition of a person who may have special needs when a court comes to consider a bail application. I hope that this was an oversight by the Government since the unsuitability of placing mentally ill people within the general prison system has been recognised for many years. I will also move an amendment in relation to this issue. In conclusion, I believe that the Bail Amendment (Repeat Offenders) Bill strikes an appropriate balance between the rights of an accused person to the presumption of innocence and the rights of the community to be protected from harm. It is both

fair and just that an accused should not be granted bail if he is unlikely to appear in court or if he is likely to commit further offences while out on bail. I commend the bill to the House. I hope that Government and other members will support my amendments in Committee.

Reverend the Hon. FRED NILE [5.31 p.m.]: The Christian Democratic Party strongly supports the Bail Amendment (Repeat Offenders) Bill. The bill is a result of a great deal of community agitation because often repeat offenders engaging in serious crime were on bail. A recent media report showed the address of a person who had committed a crime at Parklea prison. I am not sure whether he was working there or whether he was a prisoner. It has been stated that 80 per cent or 90 per cent of crime in New South Wales is carried out by repeat offenders. That is why the bill is needed. A year or so ago I met with Kings Cross police officers who were on the drug squad. They said that often after they had charged people and gone to court those people had been back on the streets selling drugs before the police got back to the Kings Cross police station. That shows the problem that we are facing. Some speakers in the debate have said that people are innocent until proven guilty. This bill will prevent people who are guilty of multiple offences from being granted bail. A report in the *Daily Telegraph* of 14 January reads:

Mr Costa cited an offender arrested 10 times and charged with 21 offences.

He had faced 25 court appearances and was subject to six first-instance warrants after he failed to appear in court...

Former Commissioner of Police Peter Ryan strongly supported the bill. A report in the *Daily Telegraph* of 15 January reads:

Repeat offenders were responsible for up to 90 per cent of crime and police were continually chasing the "same ones"...

In one case a young offender was arrested seven times for 15 different crimes but kept being granted bail...

In another case an offender was arrested 10 times and charged with 21 different offences.

He had faced 25 court appearances and was subject to six first-instance warrants after he failed to appear in court.

"We charged him with 15 different offences, he appeared in court 12 times, he failed to appear five times in court, once at a coronial inquest," Mr Ryan said.

"He was granted bail in January 2001 and then he was given conditional bail for escaping lawful custody."

Some of these repeat offenders must be very persuasive actors to continue getting such soft treatment in our courts. The bill will remove the presumption in favour of bail for certain offences where the offender committed the offence while on bail for another offence, or while subject to a sentence for another offence but not in custody or to a good behaviour bond relating to another offence. It will also remove the presumption in favour of bail where the offender has previously been convicted of the offence of failing to appear before the court in accordance with a bail undertaking. It will also remove the presumption in favour of bail in respect of indictable offences where the offender has previously been convicted of one or more indictable offences. The Hon. Helen Sham-Ho referred to people with mental difficulties. The bill requires a court or authorised officer when determining whether to grant bail to an offender who is a child or has intellectual disability to take into account any special needs of the offender arising from that fact. I would have thought that covered the matter adequately. The bill is needed and I believe it will have a dramatic effect in reducing the crime rate.

The Hon. GREG PEARCE [5.37 p.m.]: The Opposition supports bail law reform. The bill includes some useful provisions. The principal operative provision is contained in schedule 1 [3], which inserts new section 9B, which removes the presumption in favour of bail in various circumstances. As usual, the Government has presented the bill in the context of media spin, trying to whip up a public perception of the Government being active. The community concerns whipped up are seen not to be supported when one looks beyond the Government spin. I hold the view that the right to liberty is one of the most cherished and fundamental rights that a person in our community has, and the presumption of innocence should not be easily abandoned.

I was therefore very comforted to read the comments of the Attorney in the other place. He recognises this principle in a number of instances. For example, he said that the proper balance between protection of the community and the rights of the accused, who is legally presumed to be innocent, is an important matter that warrants regular monitoring. The Attorney has given an undertaking that the provisions of the bill will be reviewed in 12 months time. Joint initiatives are being developed by an interagency working party chaired by the Attorney General's Department. Programs and procedural changes will reduce waiting lists and develop other options to custodial bail conditions as part of a much broader review of bail conditions. That is worthwhile. The bill does not remove the possibility of bail for all the offenders who could potentially be caught by it. Indeed, they are still able to have bail considered under section 32.

It is with some concern that I have read and heard the Minister for Police, in his usual ignorant and intemperate language, try to beat up this bill. On 12 March the Minister issued a press release headed "New Laws to Boost Frontline Policing and Target Repeat Offenders". He used very intemperate language and started off with claims that career criminals are responsible for 80 per cent of crime. The Minister claimed in his press release, "This crackdown is expected to have a dramatic effect on the number of people behind bars". On 19 March in the House he followed that up by saying that the legislation would create a special class of offenders, not entitled to the same presumption as others.

He repeatedly claimed that repeat offenders are responsible for 80 per cent to 90 per cent of crime in this State. The Minister was whipping up this frenzy of chasing after the dreaded repeat offenders. Regrettably, Reverend the Hon. Fred Nile has left the Chamber, because he was certainly impressed by those figures. However, the Attorney General was moved in his speech in the other House to correct that misuse of figures by the Minister for Police. The Attorney General said:

According to the Bureau of Crime Statistics and Research 14 per cent of persons who have been convicted more than twice account for 40 per cent of all court appearances in the Local Court.

That is somewhat less than the 80 per cent figure that has been cited by a number of speakers today. That figure is one that is promulgated by the Police Service.

The Police Service came up with that figure and the Minister ran with it and tried to turn it into a major issue. The Attorney General then said:

In turn, it is based on figures from an extensive study in the United Kingdom.

So he was talking about repeat offenders in the United Kingdom, and the Attorney was correcting the nonsense that his own inexperienced and intemperate Minister for Police was going on with. The Attorney General continued:

Clearly, there is no exact science attached to the fact that there is a relatively small percentage of offenders who commit a disproportionate amount of crime. I suspect that the amount of crime committed by repeat offenders lies somewhere between the two estimates I have just mentioned.

Once again, the police Minister engaged in distortions, half-truths, and tried to whip up all sorts of nonsense. The legislation is a step in the right direction, but I am concerned, as are a number of other speakers, about the expectation of the Government that this bill might result in some 800 additional prisoners in correctional facilities in the next two years at a cost estimated at \$135 million. I hope that the review in one year's time will show that the problem is not as bad as that and that funds will be expended usefully and sensibly. In conclusion, the Opposition favours bail law reform and we recognise some of the useful aspects of the bill. However, I deplore that the Minister for Police once again distorted the truth and used figures to promote an intemperate and erroneous proposition.

Ms LEE RHIANNON [5.43 p.m.]: This bill leaves one wondering how low Labor can go. The Bail Amendment (Repeat Offenders) Bill is a massive betrayal. It is a betrayal particularly of indigenous people of this State. It is a betrayal of all those communities already overrepresented in New South Wales gaols, including the long-term unemployed, those with an intellectual disability and those convicted of a drug offence. The degree of betrayal is reflected in the Government's comment that this bill will lead to an increase in the prisoner population by up to 25 per cent. That is extraordinary. That increase would necessitate the construction and operation of a new gaol which, again, will be a significant expense. So much effort on the part of Labor, so much hardship for the individuals concerned, so much public money spent, and yet nothing whatsoever will have been done to address the fundamental, underlying causes of crime.

The Premier, the Minister for Police and the Attorney General know that the causes of crime are poverty, unemployment, lack of education and training, alienation, discrimination and the war on drugs. Those are the factors that cause crime, and until they are addressed crime rates will not fall. New South Wales will never achieve the safer streets that the Government and the Opposition continually clamour for. We will not see lower crime rates until the Government adequately funds education and training.

The Hon. Duncan Gay: Not while you and your cronies are loose on them.

Ms LEE RHIANNON: I did not hear the actual words of the interjection by Mr Duncan Gay, but surely he could not disagree with the fact that if we spent more money on education and training that would help lower the crime rate. We need to enact policies to create jobs in sustainable industries and move to include

young people and ethnic Australians rather than exclude and demonise them. We need Acts to finally make mental illness a government priority. That is where change is needed if we are to address the causes of crime. But there is an election on the horizon and, as we have seen, the Carr Government will go to extraordinary lengths to maintain its power.

Boosting the gaol population by 25 per cent so that the Premier and the Minister can act out their get tough on crime call is treated as just a bit of road kill by this heartless Government. How barbaric, how inhumane! Cannot some of the Labor members of this place consider what they are doing? Later I will speak about my experience as a member of the Select Committee on the Increase in Prisoner Population. In the course of working on that committee the members visited gaols, and that was probably the most shocking experience of my life. I was in the gaol for only a few hours and I saw so many young men, and particularly young indigenous men.

The Hon. Dr Brian Pezzutti: Oh, come on.

Ms LEE RHIANNON: The fact that Dr Pezzutti interjects is disgraceful.

The Hon. Dr Brian Pezzutti: What were they doing in gaol?

Ms LEE RHIANNON: Yes, they had been there for crime.

The Hon. Charlie Lynn: What were they there for? What is your solution?

Ms LEE RHIANNON: Mr Lynn now interjects. Yes, we should work with those communities, provide them with education and jobs, because they are overrepresented in the number of arrests and many more guilty verdicts are found against indigenous people.

The Hon. Charlie Lynn: What about the victims of crime?

Ms LEE RHIANNON: That is because of prejudice.

The Hon. Doug Moppett: Why were you there?

Ms LEE RHIANNON: I was there as part of an inquiry, doing my job. This is a very unpleasant situation, and the attitude of the Opposition benches shows how little it has changed. Maybe there has been a leadership change, but attitudes have not changed. Yet Labor is in power and I ask some Labor members to think about what they are doing and to put pressure on their leadership. Maybe this bill will help Labor win the coming election, but at what cost? That is what members need to ask themselves. This betrayal resonates with the tactics that we saw the Coalition trot out in the last Federal election. Obviously the incidents are different but the lack of compassion and the greed for power at all costs are similar. Let us be clear: these measures are not going to make our streets safer, old people feel more confident about going out at night, or save lives because of the misuse of firearms.

Mr Lynn: How do you know?

Ms LEE RHIANNON: Because they never have. Locking up more people in gaols does not make our streets safer—it is the inequality and the indignity that you heap on people. The Bail Amendment (Repeat Offenders) Bill removes the presumption in favour of bail for defendants who are alleged to have committed an offence while on bail or parole, or defendants who have a previous conviction for an indictable offence or a failure to appear. Judges will have to be convinced by the defence that bail is appropriate for these alleged offenders, rather than the present situation where they have to be convinced by the prosecution that it is not appropriate. The default will be no bail. I would like Opposition members to listen to this, because judges can refuse bail now. The Opposition is handing the Government another way to beat up on them. The Opposition should expose the Government. The bill is a politicisation of the judicial process so that the Government can look big to the voters. The Opposition is foolishly handing it to them. Currently, there is no impediment to a judge denying bail to a defendant who is alleged to be a repeat offender.

The Hon. Dr Brian Pezzutti: Quite right. That is so.

Ms LEE RHIANNON: The Hon. Dr Brian Pezzutti agreed that it is so. Why, then, do we need the legislation? We do not need it. The Opposition is handing the Government a free kick.

The Hon. Dr Brian Pezzutti: Point of order: Ms Lee Rhiannon has partly verbalised me. Just because I agreed with her that a judge will now have no impediment to refuse to bail, equally a judge will have no impediment to give bail. She is partly quoting me, which she does all the time, and I object to it.

The DEPUTY-PRESIDENT (The Hon. Henry Tsang): Order! There is no point of order.

Ms LEE RHIANNON: It is currently a matter of judicial discretion. If the police prosecutor can make a decent case then odds are that bail will be denied.

The Hon. John Ryan: That's right.

Ms LEE RHIANNON: I thank the Hon. John Ryan for his interjection. The no bail option is already in place. The bill is politically motivated. It is not about making our community safer, and highlights how foolish the Opposition is. Let us remember that the denial of bail can have a catastrophic impact upon the lives of those alleged to have committed a crime. Honourable members should pause to think about what will happen to people who end up in gaol. Perhaps they are guilty, but maybe they are innocent. Many more people will end up in gaol, and that will be horrific. People will wait in gaol for well over a year, which will result in a loss of employment, income and family support. The impact is not only on the person sent to gaol but also on the many people who are dependent on that person. Many families will have a hard time. Let us remember what life is like in prison. Alleged offenders are exposed to violence, rape and the brutalising prison culture. Many of us in this House have children. I urge honourable members to think how they would feel if their young son ended up in gaol. They would do anything they could to keep him out of gaol, because they would know—

The Hon. Dr Brian Pezzutti: We are talking about repeat offenders. Be relevant.

Ms LEE RHIANNON: Yes. Politicians can have children who are repeat offenders. Nothing stops our children from doing it.

The Hon. Doug Moppett: The extent of your rhetoric is matched only by the perfunctitude of your ignorance.

Ms LEE RHIANNON: I acknowledge the interjection of the Hon. Doug Moppett. Rhetoric is one of the things I enjoy about him, but that was a bit off the beam. Enormous damage can be done to the lives of defendants, despite the fact that they may be acquitted or that charges may be dropped, and despite the fact that they are supposed to be considered innocent until proven guilty. That is something we were once very proud of in our judicial system, but it is being eroded more and more. Remanding people in custody on the basis of a past conviction and without any evidence of their being a safety or flight risk goes some way towards overturning of the presumption of innocence. In 2000 in New South Wales higher courts nearly 20 per cent of those charged were either acquitted of all charges or had all charges dropped.

When enacted, the bill will have a particularly harsh effect on indigenous Australians, another reason why this House should pause to consider what it is about to do. Indigenous Australians are far more likely to come before the criminal justice system. In 2000 9 per cent of those charged with Local Court offences were Aboriginal and Torres Strait Islanders and 10 per cent of those charged with higher court offences were Aboriginal and Torres Strait Islanders. As has been found many times, Aboriginal and Torres Strait Islanders are significantly more likely to plead guilty or to be found guilty of a criminal charge. The bill clearly conflicts with the findings of the Royal Commission into Aboriginal Deaths in Custody, which is something that all of us should be ashamed of.

The commissioner concluded that all reasonable steps should be taken to prevent indigenous Australians from being unnecessarily incarcerated. Once again, this illustrates just how far the Government has strayed from the values of compassion and justice, which were once associated with the Australian Labor Party. The bill is Labor's betrayal of the struggle for justice for indigenous people in New South Wales. It is an ongoing struggle that will be set back once this bill has been passed. Why has it been set back? Because Labor is pursuing its shock jock, law and order agenda. It is knowingly adopting a direction that has been proven to lead to higher numbers of black deaths in custody. The report of the Select Committee on the Increase in Prisoner Population, of which I was fortunate to be a member, found that 60 per cent of inmates are functionally illiterate, 40 per cent are long-term unemployed, 13 per cent have an intellectual disability and 80 per cent are in prison for offences related to alcohol or other drugs.

The Hon. Charlie Lynn: The rest are the Greens.

Ms LEE RHIANNON: We just heard a smart interjection from Hon. Charlie Lynn. He probably thinks that making a smart aside is clever, but I ask him to think about whether those people deserve to be in gaol because they have not been fortunate enough to become literate and numerate, because they are long-term unemployed or because they have drug problems. They do not deserve to be in gaol. The cumulative effect of the bill and the various other law and order legislation will criminalise poverty and mental illness. The illiterate, the unemployed, the mentally ill and the drug dependent will be incarcerated once the legislation is enacted. The Greens strongly oppose the bill. Although we will move some amendments, we oppose it outright.

The Hon. DAVID OLDFIELD [5.58 p.m.]: I strongly support the Bail Amendment (Repeat Offenders) Bill. It is a long-awaited and appropriate step towards keeping habitual criminals off the streets and, hence, reducing their opportunities to bring misery and suffering to the lives of law-abiding citizens. Although I agree that crime needs to be dealt with in more socially innovative ways than through simple punishment, I do not subscribe to the view that being disadvantaged financially, culturally or otherwise is a factor that should be allowed to override all other considerations. Further, the vast majority of people who are doing it tough and who often, through no fault of their own, and who would be thought of as disadvantaged are honest, law-abiding citizens as appalled by the various crimes that assault our community as those of us who have, perhaps in some respects, been luckier.

I firmly believe that the rehabilitation of habitual offenders is virtually impossible. Those who fall into this category must be, in the first instance, dealt with in a manner that protects society from their criminal actions. Without dwelling too much on the point, I have absolutely no doubt that most crime is linked to poverty, abuse, unemployment, downright anger at society and other social misfortunes, but once a person has virtually made a career of crime, there is very little that can be done other than to restrict his or her capacity to carry out criminal acts.

The major work that needs to be done in the community is that which is aimed at preventing people from taking the leap—or perhaps being nudged into a life of crime in the first place—however short that life of crime may be before they are caught and caught and caught, again and again and again. However, circumstances being as they are, our priorities must include acknowledging and consistently upholding that those who suffer at the hands of criminals are very clearly and very much the victims. It is those people, not the criminals, who deserve the majority of our attention and assistance. It is abundantly clear that a high percentage of crime is committed by offenders who are on bail and/or the subject of other charges or investigation. The bill will begin to address this issue and is, therefore, worthy of support. Arguments to the contrary are seriously less than reasonably sustainable.

Many of the offenders affected by this bill will have been convicted dozens of times. Amazingly, some will have been charged hundreds of times. It should not be lost on anybody that, as horrific as such disclosures are, they relate only to the crimes for which these offenders were actually apprehended. How many crimes for which they are not caught do such offenders commit? During this debate, some members have spent considerable time on the notion that Australians of Aboriginal descent are grossly overrepresented as offenders. This is nonsense. The fact is that the number of Aboriginal offenders in gaols is directly related to the extremely high level of crime for which they are responsible. If anything, Aboriginal representation in gaols for burglary and violence, including murder, reflects the enormous amount of crime committed by individuals and groups from the Aboriginal section of the community.

Given the softly, softly and politically correct approach often extended to Aboriginals, it could be very reasonably argued that the number of those in gaols who are of Aboriginal descent would be even higher, except that many are not pursued and not charged. There is an understandable view in some parts of the State that Aboriginal people are virtually immune from prosecution. It is well understood, though no doubt an unpopular point for the bleeding hearts, that police often do not attempt to apprehend, arrest or charge many offenders of Aboriginal descent. Despite the fact that many of these people escape arrest, Australians of Aboriginal descent are still 12 times more likely than other Australians to be in prison for homicide and 16 times more likely than other Australians to be in prison for breaking and entering. Honest Aboriginal Australians are understandably at their wit's end over the contribution to crime made by many from their ranks.

We must not exalt these criminals to a position where they are considered victims and simply forgiven. How would a victim of crime feel upon discovering the criminal responsible for the victim's loss and suffering was out on bail at the time of the criminal attack despite a long history of offences? Would we ask elderly people who are bashed and robbed in their own home to accept what has happened to them as bad luck, even though the offender was on bail for home invasion? Could a family be expected to understand how their loved

one was killed in an armed hold-up by an habitual criminal who had only the day before been released on bail for robbery or similar offences? This bill removes the presumption in favour of bail for certain offences. This bill is a start to addressing the law-abiding public's right to expect criminal opportunities will be restricted. Bail should not be an open door that puts habitual, unreformable low-life criminals back on the streets to commit even more crime while they await judgement on the most recent offences for which they were actually apprehended.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.04 p.m.]: As part of her opening address to Parliament earlier this year, the Governor outlined the State Government's legislative agenda in the lead-up to the State election next year. Among the environmental sweeteners and bills aimed to assist the Country Labor campaign in regional New South Wales, a fair amount of law and order bills were thrown in for good measure. We have just heard a good example of that genre. The speech of the Hon. David Oldfield was full of righteous indignation but it did not contain any analysis of why people might commit the crimes or an admission that putting more people in gaol has not helped. This bill is a Neanderthal response from the Government, and the Hon. David Oldfield bays in agreement.

The Bail Amendment (Repeat Offenders) Bill will remove the presumption of bail where an offender has committed the offence concerned while on bail for previous offences, on parole or on a good behaviour bond. The presumption in favour of bail will also be removed for an offender who has previously been convicted for the offence of failing to appear before a court in accordance with a bail undertaking. This will also apply to an offender charged with an indictable offence who has a criminal record for indictable offences. If the offender is a child or intellectually disabled the court will have to take into account any special needs when determining whether to grant bail. Items 6, 7 and 8 provide that the court may grant bail with a condition that the offender is to reside in a bail hostel.

Under the current Bail Act there already exists a clear regime determining a defendant's eligibility for bail. For an offence categorised as minor—generally an offence not punishable by imprisonment—offenders have a right to be released on bail, with certain exceptions as outlined in section 8. If the offence is categorised as non-violent there is a presumption in favour of bail, which may be rebutted if the prosecution can demonstrate that bail should not be granted. Under section 9A the presumption in favour of bail is removed for the accused if the offence is of a violent nature. Such offences include murder, aggravated robbery and domestic violence. With these offences the onus is on the accused to prove to the court why bail should be granted. The same also applies to the accused charged with serious drug offences as defined under section 8A.

None of this addresses why people are repeated offenders. People who are drug dependent must have money to feed their addiction. If they are unemployed they will commit repeat house-breaking offences. While they are in gaol they will not offend, but fundamentally this is a preventable crime if a more intelligent approach were taken to drug policy. The huge amounts of money spent on locking people up embodies the opportunity costs of treatment and crime prevention. That is why this bill is such an absurdity and an obscenity. In his book *Discipline & Punishment*, French sociologist Michel Foucault traced the development of the contemporary criminal system beginning from eighteenth century France. Foucault reasoned:

The discipline that prisons tried to install in criminals was similar to the discipline in military units. The basic idea of discipline is that one will be rewarded for achievement, and be punished for lack of achievement or non-conformity. Forcing the prisoners to live and work under strict guidelines instilled discipline. The prisoners were forced to "constructively" use every minute that they were awake. This was social training to prepare criminals for a life of productivity when released.

However, there is an increasing amount of evidence that modern prison systems are not rehabilitating offenders; they are manufacturing more criminals. Like the Hon. Lee Rhiannon, I was a member of the Select Committee on the Increase in Prisoner Population, the so-called SCIPP. I have seen first-hand the effects of prison institutionalisation on criminals. Grafton gaol is the closest thing to a human zoo that I could ever imagine. People who go to that gaol are dehumanised. To expect them to act as rehabilitated people on their release, having gone through such a traumatic experience, is unrealistic and foolish. While it is obviously necessary for society to punish people who commit crimes at common law—we as members of the legislature have deemed them to be offences for the common good of society—we must acknowledge the need to re-evaluate public policy on how to best prevent crime.

If people thought that the money was being spent on prevention, resulting in less crime, they would not bray for revenge in the way the Hon. David Oldfield does. The two select committee reports made sensible and reasonable recommendations, achieved through consensus and research. I congratulate the Hon. John Ryan, who chaired the Select Committee on the Increase in Prisoner Population, on his good work. It is unfortunate that the

Government and the Coalition have both ignored the committee's recommendations. I urge the Hon. John Ryan and other like-minded members to cross the floor and support the Democrats in opposing the bill. However, I accept that that is unlikely because of the discipline of the major parties and the fear they engender with respect to preselection.

The Carr Government, the best and most successful conservative Government this State has ever had, is big on building more prisons and closing down schools—as long as the schools are not in the electorate of the Deputy Premier. A crucial plank in the regional development policy of the Government appears to be more prisons, with a prison to be built in Kempsey and the Cooma prison to be reopened. As at 24 March 1,668 people were on remand in New South Wales, equating to 20 per cent of the prison population. The passage of this bill will ensure an even greater increase in the prison population. There is little point in inquiries such as the one conducted by the Select Committee on the Increase in Prisoner Population when legislation such as this is passed.

The committee's final report concluded that the remand population appears to be a significant contributing factor in the increase in the total number of people in custody in New South Wales correctional facilities, yet the majority of these people are ultimately not given a prison sentence. The committee found that the increasing prisoner population has been costing the people of New South Wales an extra \$145 million a year in real terms since 1994. The Probation and Parole Service estimates that the cost of incarceration per prisoner to be as high as \$64,486 per year or \$181 per day compared to supervised community-based programs at \$3,150 per year or \$8.63 per day. Surely the Treasurer can see a financial incentive in promoting such programs!

The foreword to the report noted that there is "no reliable research that indicates that any of these increases"—in the prison population—"have either prevented crime or arisen from a significant increase in criminal behaviour in the community". Again, this Carr Tory Government ignores the recommendations of yet another committee and panders to the radio shock jocks. I have received correspondence from the Law Society and the Bar Association outlining their opposition to the proposed legislation as it stands. Both peak bodies claim that the Government has failed to consult them on the scope of the bill. They express concerns in relation to the bill and the Democrats, unlike the Carr Government, have listened to their concerns. The Criminal Law Committee of the Law Society has expressed concerns that many more people will be refused bail, even though they may not ultimately be sentenced to prison if a court finds the offender innocent or cannot prove guilt beyond reasonable doubt.

Currently, if gainfully employed persons are refused bail or cannot afford bail they are placed on remand. While on remand they receive no financial compensation for the time they have served, even if they are found not guilty. I was a bit shocked by issues paper No. 15 of the Bureau of Crime Statistics and Research entitled "Bail in NSW: Characteristics and Compliance" and dated September 2001. The figures contained in table 14 showed that the proportion of persons on remand subsequently convicted in the Local Court was 43 per cent and in the higher courts was 83.1 per cent. Therefore, a significant percentage of people who are refused bail are eventually found innocent or are not sentenced to further imprisonment. That is a matter of some concern. People are serving more time in prison than they would have served if convicted—and they are just waiting for the justice system to catch up with their case. This bill automatically assumes the guilt of the accused—people cannot be given negative time in gaol to make up for the time they spent in gaol if they are found to be innocent.

The Premier wants to increase the remand capacity by 800 over two years, an increase of 50 per cent. Surely that money would be better spent on having the courts process people more quickly. The estimated cost of expanding prison capacity is \$135 million, in addition to the \$80 million already allocated for the proposed Kempsey prison and \$90 million to reopen Cooma gaol. If this bill is passed court accommodation and staffing levels will need to be enhanced to facilitate a functioning court system to meet the increased demand in auxiliary services. However, this legislation is being debated before the 2002-03 budget has been brought down. The Criminal Law Committee of the Law Society is also concerned that many people are refused bail because their needs are not capable of being addressed. For example, the lack of sufficient drug detoxification accommodation and residential accommodation for alleged offenders with mental illness leaves judges with no choice but to refuse bail and put them in gaol. Gaols are being used as substitute residential accommodation for offenders with mental illness or those who need drug detoxification. As everybody knows, gaol beds are more expensive so we are paying more to do harm. In a letter dated 11 April the New South Wales Bar Association stated:

We do not support the additional exceptions to the presumption in favour of bail (proposed by this bill) as it regards the listing of these matters as criteria to be taken into account as sufficient to enliven magistrate's discretion to refuse bail in appropriate cases.

It also notes that people remanded in custody cannot be classified as they have not been tried or convicted of any offence. This results in a wide spectrum of offenders and alleged offenders, mixing seasoned vicious criminals with first-time offenders on short sentences. The threat of physical violence and the psychological effects on people on remand, who may not even be sentenced at a later date, cannot be ignored or underestimated. Although the Government has chosen to ignore a major part of the recommendations of the Select Committee on the Increase in Prisoner Population, it is slightly encouraging to see that the Government is taking some initiative by expanding bail hostels. However, there is hardly enough available accommodation to cater for even the increase in women on remand. It is a token compared with the building of gaols. I am concerned that people who would have been sentenced to gaol will now be sentenced to gaol hostels instead.

The impact of the bill on Aborigines needs to be examined. Aborigines are already overrepresented in New South Wales gaols, and this bill will only ensure that more Aborigines end up in gaol. The New South Wales Inmate Census 2000 shows that 15.9 per cent of males and 21 per cent of females in prison are Aboriginal or Torres Strait Islanders, making a total of 16 per cent of all full-time inmates. Those percentages are grossly in excess of their representation in the community. Data from the Children's Court Information Service on finalised appearances and from the Department of Juvenile Justice compiled between 1997 and 1999 shows that 26 per cent of all bail applications refused during that time were made by young people of Aboriginal and Torres Strait Islander extraction.

Refusals of bail to this demographic have increased by 15 per cent, and 86 per cent of bail refusals involved offenders charged with "less serious offences", which were largely summary. However, I have learned that the Government intends to accept amendments that will go some way towards remedying this situation. I note that the Greens also have amendments in this regard. I have quoted from the Bureau of Crime Statistics and Research [BOCSAR] report on bail in New South Wales in 2000. It is interesting to note that the Minister in the other place referred to that report, which he said highlighted:

... the increasing incidence of persons failing to appear in compliance with their bail conditions to attend the next court date.

However, the Minister failed to mention other interesting statistics collated by BOCSAR. Of the case finalisations that occurred in 2000, the report made special note that:

The 14.6% of cases where defendants fail to appear are not separate individuals over the counting period. A single person may be involved in several court cases in a particular time period, and may fail to appear at some or all of them.

Furthermore, when a person against whom the warrant has been issued is found and brought to court, a new case is commenced and subsequently finalised.

Although it is 14.6 per cent of cases, it is not 14.6 per cent of defendants. As far as I am aware this report is not publicly available, but my office managed to obtain a copy after contacting BOCSAR. The report points to a steady increase in the denial of bail applications made by people charged with a serious offence and people who have committed offences while on bail. The report found an increase in the number of people charged as a result of offenders being brought to New South Wales courts by police issuing a court attendance notice. The percentage of refused bail applications in the Local Court increased by 5 per cent from 7.5 per cent to 12.8 per cent between 1995 and 2000. In 2000 a total of 44,824 charges were brought before the Local Court and 5,737 people were refused bail. The report notes:

... the proportion of persons who were refused bail has increased steadily in the Higher Courts while the proportion granted bail has steadily decreased.

The percentage of persons who had bail refused in the District and Supreme courts increased from 25.8 per cent in 1995 to 37 per cent in 2000. This means that 1,417 people brought before the higher courts in New South Wales for serious indictable offences were refused bail. Between 1995 and 2000 in the higher courts there was a general reduction in the likelihood of bail being granted at finalisation for the most frequently charged offences, such as robbery, sexual assault, trafficking in illicit drugs, break and enter, and assault. The report states:

For example, in 1995, 50.2% of persons who were charged with robbery as the principal offence were on bail at the time of case finalisation, while in 2000 there were 37.1% of such offenders on bail, following a steady downward trend. Similarly, the proportion of people charged with trafficking illicit drugs offences on bail declined from 80.8% to 70.7% between 1995 & 2000.

This report clearly shows that in the current court system there is a growing trend of refusing bail to the class of offenders that this bill seeks to punish. The Government's agenda of sending more people to gaol is already being implemented. Therefore, this bill is unnecessary. The people of New South Wales voted in a Labor Government, and that government has ended up competing with the Liberal Party on law and order issues. We

need a sensible debate about crime prevention not just law and order. The Government should pay attention to the report of the Standing Committee on the Increase in Prisoner Population and the Standing Committee on Law and Justice report on crime prevention through social intervention instead of passing bills such as this that will chalk up statistics so that the Premier can brag to the shock jocks about how tough he is on crime. We absolutely oppose this bill.

The Hon. JOHN RYAN [6.24 p.m.]: The aspects of the criminal justice system are many, varied and complex, and I am amazed at how much good research and good experience is ignored by people who seek to change the law significantly. I had some initial reservations about the Bail Amendment (Repeat Offenders) Bill as I was concerned that it would alter the criminal justice system significantly and produce the outcomes mentioned by the Hon. Dr Arthur Chesterfield-Evans, including more incarcerations. However, it is possible that this bill will make absolutely no difference to the operation of our courts as it contains many provisions that the courts already consider before granting bail.

I am aware of the anecdotes that the Minister for Police attached to his press release when he announced the introduction of this legislation. Those anecdotes, which were provided by the Police Service, suggest that this legislation is terribly necessary. They are not lengthy and it may be useful to repeat one. Offender A has an extensive criminal history for property and drug-related offences. Between December 2000 and April 2001 he was arrested seven times by police and charged with 15 offences. He appeared in court 12 times and failed to appear in court five times, including twice at a coronial inquest. He was granted bail in January 2001 and given conditional bail for the charges of escape lawful custody, goods in custody and revocation of a community service order. That case is apparently meant to be typical of what occurs in our courts every day.

However, we must bear in mind the provisions that the Bail Act already contains. When considering bail applications, courts are supposed to have regard to any previous failure to appear in court pursuant to a bail undertaking or a recognisance of bail. So our courts are supposed to consider, before granting bail, whether a person is inclined to skip bail. They are also asked to consider whether a person has failed, or has been arrested for an anticipated failure, to observe a reasonable bail condition previously imposed in respect of an offence. In addition, they are supposed to consider whether it is likely that the person will commit a serious offence while at liberty on bail. Many of the measures that we are being asked to accept in this legislation are already considered by our courts.

I cannot believe that the court granted bail in the case that the Minister for Police outlined in his press release. That would be most unlikely if the court were properly instructed by the police that a person had a long history of prior offences, was currently on bail and was extremely likely to commit the same offence again. If it did happen, I suspect that the magistrate concerned should be out of a job.

The Hon. John Hatzistergos: It does occur.

The Hon. JOHN RYAN: It must occur rarely. If the New South Wales Police Service wanted this horrible situation addressed urgently, it would produce evidence of countless instances when it appealed bail decisions. Yet that rarely occurs. Unless the police have a long list of cases in which they appealed bail decisions and found the law to be inadequate in that regard, I am not sure that they can make a cast-iron case for changing the law. That is why I suggest that the example the Minister gave to prove the need for this legislation is most unlikely.

The myth perpetrated by the Minister that 80 per cent of crimes are committed by repeat offenders was contradicted by none other than the Attorney General in another place, and could be contradicted by any number of surveys conducted by the Bureau of Crime Statistics and Research. When this legislation was announced I contacted the Bureau of Crime Statistics and Research about several issues. I asked whether it had any research that revealed how many people would be affected by this bill and how many individuals continually reoffend.

The bureau admitted to me that no such research has been done. It was just starting to do that research because it had been asked by the Government to do so. But nobody has tracked offenders to ascertain how many people have been guilty of offences. I was concerned about suggestions that there ought to be mandatory sentencing in New South Wales and I asked the bureau to provide me with some statistics about how many people would be affected if mandatory sentencing were introduced in New South Wales. Interestingly enough, the bureau is about to complete a survey on this subject. Would you believe, if we initiated a sentence for every repeat offender obliged to be sentenced to custody, an additional 200 people would enter our gaol system each

year? In other words, about 200 of those who appear in our courts are likely to reoffend. The overwhelming number of people who appear in our courts are people who have been charged for the first time and got the message. That is a really surprising fact. I was astonished by it. It is difficult to tease it out until you engage in the sort of rigorous research that the Bureau of Crime Statistics and Research will have undertaken.

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

The Hon. JOHN RYAN [7.45 p.m.]: These laws, whilst they appear in black ink to be rather tough are, in practical circumstances, not likely to make a lot of difference. My first reason for saying that is that the police had not put forward what I would regard as a well-studied case that the law was necessary; its necessity was based largely on anecdote. There is in fact good evidence that the courts are not becoming more lenient with regard to bail, they are becoming harsher. That kind of makes sense when one considers the raw statistics. Our prison population has been increasing sharply largely because the number of people being held on remand—that is, refused bail.

A study of our prison population reveals that the sentenced population has remained reasonably stable although it has increased a little. The reason for a 40 per cent increase in the number of women in prison and about a 20 to 25 per cent increase in the number of males in prison is due largely to the courts being much less lenient with regard to bail or the police bringing more people to court because they are arresting more people. It is one or the other. In any event, there is not much evidence to suggest that the courts are being in any way lenient. In order to assist the House in making that assessment, I would refer to a study on people on bail to which the Minister referred in his speech. Admittedly these comments are limited to appearances in the higher courts. One of the concluding paragraphs of this study by the Bureau of Crime Statistics and Research states:

Overall there was a general reduction in the likelihood of being granted bail for most offences over this time period.

I would have thought that was game, set and match. But if I needed to elaborate any further, I would refer to the following: in 1995, 50.2 per cent of persons charged with robbery as a principal offence were on bail at the time of case finalisation; while in 2000 there were 37.1 such offenders on bail following a steady annual decrease. Similarly, the proportion of persons charged with dealing or trafficking in illicit drugs offences who were on bail declined from 80.8 per cent to 70.7 per cent between 1995 and 2000.

The situation in the Local Court is a little more difficult to determine. One of the reasons is that the Local Court now handles more of the higher level court matters because its jurisdiction has been increased. So what has largely happened is that there has been little change in the Local Court profile. Similarly, there is little evidence from the statistics that magistrates are becoming more lenient with regard to bail; it is quite possible that they are becoming more severe. However, the report of the Select Committee on the Increase in Prisoner Population examined some studies with regard to bail. A most interesting study was conducted by Dr Sue King, a South Australian academic. The study examined the files of a number of individuals who had been processed by the local courts, as to whether or not they had received bail; but in particular it examined whether the recommendations of the police in each case had been followed. They also noted the length of the hearings that determined bail. It was found that overwhelmingly magistrates do what the police ask them to do, and in most instances there is almost no examination of the question of bail by the courts. Most bail hearings by the courts were remarkably short—at least in the jurisdictions of Victoria, South Australia and Western Australia—and they largely followed what the police recommended. Rarely, if ever, was a police recommendation challenged.

That research was conducted in three States other than New South Wales. The Joint Select Committee on the Increase in Prisoner Population recommended that the New South Wales Government should examine whether the trends in our State were similar. It is highly likely that, regardless of the State or the law, in most instances the courts follow what police recommend. Overwhelmingly, the people who appear in our courts are unrepresented. The question of whether a police recommendation is to be refused largely is not even asked. If what I have pointed out to the House is correct, it is highly likely that these laws, while they appear on the surface to be quite draconian, are unlikely to make a great deal of difference in practical output.

However, I have noticed various predictions in the media and, if I remember correctly, even comments by the Minister for Police that have predicted an impact on the size of the prison population. It may well be that there is an impact on the size of the prison population, but no-one in the Government is able to bring evidence to this House that that has been studied. Frankly, I am amazed at the number of times we make decisions with regard to the criminal justice system without really knowing the impact of those decisions. They sound popular, appropriate and credible. Cases are put forward by anecdote but rarely are the situations studied to determine what will happen.

In making these bail reforms to protect the community we are possibly also incurring massive public expenditure. If the forecast increase in the size of the prison population is realised, it is possible that we may spend \$40 million on new prisons and a similar amount each year to staff them. They are very significant commitments of expenditure indeed. The public should have an opportunity to weigh the benefit of such expenditure to see whether the money might be better spent in other places. It may well be that the community will come to the conclusion that we have come to, but I believe that the issue should be studied much more rigorously than it has been to date.

Sadly, I believe this is not a genuine attempt to change the law. Interestingly, the Australian Labor Party is now unpicking legislation proudly introduced by Mr Wran as a reform of the bail laws. I wonder what Mr Wran must be thinking of the party he has left behind as this bill clearly goes against the direction in which he was going. I am not suggesting that there are no reasons to protect the community from repeat offenders—please do not get me wrong; that is not what I am suggesting—I just hope that this blunt instrument works, because I suspect that it has been crafted for political reasons rather than as a genuine attempt to redress the issue of safety within the community.

It could well be that people are escaping our criminal justice system for a reason other than the leniency of magistrates. I was informed while I was making inquiries about this matter by the Bureau of Crime Statistics and Research that the number of people listed on the criminal names index—the computer database that police use to determine people's prior criminal record—is approximately equal to twice the population of New South Wales. It is just not possible that that many people have been arrested, charged or convicted with crimes in New South Wales. If the criminal names index is not accurate, as I believe to be the case, one of the reasons why people are being granted bail under circumstances in which they should not is that police are not able to identify that an individual arrested in one Local Court area is the same person who was arrested in another Local Court area. It is not easy to access criminal records in the timeframe required before people are brought before the court for the initial bail determination.

Some people might be granted bail when they should not because the court system and the police are not able to identify correctly those individuals who during the previous weeks or months have been arrested for a similar offence, charged with that offence and granted bail. I understand that if there is a problem with the legal process in New South Wales it has little to do with the state of the law; it has to do with the state of the computer database that the police and the courts use and depend upon to get that sort of intelligence and to determine what is going on. I understand also that in 1995 the Carr Government received departmental recommendations that were left over from the outgoing Fahey Government. A Cabinet paper suggested that a number of departments should work together to solve this computer database problem. I understand from people who are relatively senior in the Department of Corrective Services that this issue had not been addressed, and it was discovered that some people were being granted bail when they should not have been. That provided the trigger for this bill, which is largely a political device rather than an attempt to reform the law.

I will put to the House the comments of the Minister for Police to demonstrate what I mean. On numerous occasions the Minister has had to apologise when he has been brought to account for the accuracy of his statements with regard to what this bill is designed to achieve. It was well documented in the press that on one occasion he addressed a group of business people at a luncheon and told them that this bill would make it impossible for people charged with prior offences to get bail. Immediately he came out of the luncheon he was confronted by the media and corrected himself. He said that it would not be impossible, it would just be more difficult.

That is one example of how this bill leans more towards being a political gimmick than being a bill of substance. A couple of the provisions are welcome, because they implement some of the recommendations of the committee that I chaired, the Select Committee on the Increase in Prisoner Population. One provision relates to the fact that, amongst other things to be considered by magistrates when they grant bail, a magistrate should have regard to the possibility of containing people in bail hostels. I remember making that recommendation in the interim report of the select committee. When, six months later, we received the response of the Government and the Department of Corrective Services, that recommendation was trenchantly opposed. The Government believed that we should not have bail hostels.

I am not sure where this particular wisdom has come from, but the bill suggests that bail hostels ought to be considered, particularly for persons of Aboriginal or Torres Strait Islander origin or for people who might have a special need, such as a mental illness. I believe that is a good thing. The Opposition, in tandem with other members of this House, believes that it is all very well having a provision in law for bail houses, but it is now

time to construct some. I have the pleasure of being a member of the board of Guthrie House, one of the few available facilities in the city of Sydney that provides bail accommodation for women. Women who are likely to be granted bail need to have a permanent address or some level of support.

Guthrie House is always full. I remember one of the most tragic moments during the select committee hearings was when the manager of Guthrie House—an absolutely wonderful human being, Ms Anne Webb—explained that every year she turns away more than 90 people. People who are in desperate need are able to be housed and supported at that facility. That is one facility that could be used under the provisions of the bill. I refer to a letter that has been received by the shadow Minister for Aboriginal Affairs—and, I suspect, by other members—from the Law Society of New South Wales. The society drew attention to the provision for people granted bail to reside in a bail hostel. The letter states:

There is no such accommodation available in New South Wales for adult offenders, and only one bail hostel—Ja-Biah—for juvenile offenders. The Department of Corrective Services gave evidence to the Increase in Prisoner Population Inquiry that it does not support the establishment of bail hostels ...

It is the Law Society's view that if the *Bail Act* is to be amended as proposed, the Government must also be committed to funding sufficient services and accommodation outside the prison system.

The Law Society asked for our assistance in highlighting the urgent need for the Government to do that. Mr Ray Jackson, of the Indigenous Social Justice Association Inc. wrote to the Opposition expressing a similar view. He is a distinguished individual who meets the needs of Koori people in custody. He wrote:

In his Second Reading Speech of 20/03/02 Attorney General Bob Debus makes reference to the availability of supervised bail accommodation for both adults and juveniles ...

It is quite well known, and I believe that Government recognises this fact is well, that there is currently NO adult accommodation and only 1 juvenile bail accommodation that holds 6 beds only!

In one respect that is not quite accurate. There is bail accommodation provided for women at Guthrie House, but to the best of my knowledge that is it. No similar facility is available for men. Similar correspondence has been received from Dr Eileen Baldry, Senior Lecturer, School of Social Work at the University of New South Wales. I am sure that Dr Baldry is known to all members as someone who is interested in all matters regarding the prisoner population. She was one of the drivers who recommended to the Opposition and others that we should establish a committee on the increase in prisoner population. In her letter she stated:

I would like to point out that there is no specific bail accommodation for any adults, let alone Indigenous adults, available in NSW and only a six-bed bail hostel for Aboriginal juveniles. The provision of bail accommodation was one of the unanimous recommendations of both Reports of The Select Committee into the Increase in Prisoner Population (2000, 2001). To date the NSW Government has shown reluctance to pursue this recommendation. It is thus obvious that the courts have no accommodation options when considering bail for Indigenous persons who have no stable or suitable address. Indigenous persons in NSW are more likely to be repeat offenders than other offenders and are more likely to be without suitable housing.

Therefore I urge the Coalition to put forward an amendment to the Bill to the effect that the Attorney General would provide bail accommodation for Aboriginal persons facing possible remand in prison. This would make bail a real option for such Aboriginal persons.

The Coalition has given consideration to that option and I understand that amendments will be moved in Committee. I turn now to media reports that indicate how desperately bail accommodation is needed for some young people. An article in the *Central Western Daily* in Orange on 2 March, under the headline "Minister must address concern", stated:

The scene could have come from a Dickens novel—a 12-year-old child appearing before a court on charges of stealing; the police alleging that the offences were committed because the boy needed clothes or money for food.

But this was no sad but entertaining tale from a 19th century book exposing the oppression of the poor of London.

This is what happened in the year 2002 before a magistrate in our city only last Thursday.

That the child's circumstances landed him in court was bad enough; what was deplorable was that the magistrate had no option but to order that the boy be held in custody during a week's adjournment.

This in spite of a plea from the Department of Community Services for their assistance in his care. A department officer's advice to Her Worship: call the DoCs helpline. Even Charles Dickens would have been appalled.

The appearance led magistrate Jan Stevenson to declare that she had "not been as concerned for a child in the 12 years I have been on the bench".

The case should start alarm bells ringing very loudly in Macquarie Street.

It comes only days after this newspaper reported that children at risk were not being dealt with adequately in the Orange office of DoCs.

A few days later the Opposition drew this matter to the attention of the Minister for Juvenile Justice, and Minister Assisting the Premier on Youth, in this place. The *Manning River Times* on Wednesday 8 May, only weeks after the event in Orange, under the headline "Girl, 14, screams as bail refused", stated:

A 14-year-old girl, appearing in Taree Children's Court for the first time, was refused bail because the Department of Community Services did not have the resources to accommodate her. Charged with malicious damage, the girl, who is a ward of the State—

even worse—

reluctantly left the courtroom crying, "I'll get bashed in there, I'm not going." She was comforted by a police officer who escorted her from the court, but when she was outside her crying and screaming could still be heard inside the courtroom.

Magistrate Barry Hodgson ordered a representative from the Department of Community Services to attend court on Monday afternoon.

The representative told court that the girl had been to some of their most experienced foster families, but had been removed because of disciplinary problems.

The department was unable to find a place that was suitably secure for that young person. What makes the situation more deplorable is that this young person was in the charge of the State; the Minister, and we, are her guardians. Clearly, a 14-year-old screaming in court with that sort of concern ought to move us all. I remember hearing our colleague the Hon. David Oldfield say that repeat offenders cannot be rehabilitated. My personal experience gives the lie to that remark.

I committed crime when I was a young person. I was held and nurtured by people who decided to give me an even break and, as a result, I hold the perfectly respectable position of representative of the people of New South Wales in Her Majesty's Parliament. I know only too well that I could have been another 14-year-old screaming, not wanting to be committed to some sort of institution because supported accommodation was not available to help me deal with the very deep family problems that affected me and, no doubt, were the background to my offending. Offending no more, I am nevertheless grateful that I was one of the lucky people who were given a break. I feel some obligation as a member of this Parliament to speak up for other young people who may not have the same opportunity.

I could read from another press clipping from Orange, also in March, that describes similar circumstances. I understand full well that there is a genuine need to protect the community from people who commit crime, and I feel desperately sorry for the victims of that crime. But at the same time, particularly when offenders are young, immature and capable of being rehabilitated, we should treat them with adequate mercy and give them the opportunity for rehabilitation and restoration. Surely it is in our best interests that people who commit crime stop doing it. The one thing that is often ignored in law and order debates is that the antidote to crime is usually maturity. People stop committing crime because they grow up. Studies tell us over and over that the more we send people to gaol the more we retard that growing-up process. That is something we should consider.

It is not that we should be soft on crime or that we should not protect victims. I ask, as I have asked again and again, that when we consider reforms to the law—reforms that are designed to bring about a safer community, and we all want that—instead of doing things regardless of whether we know they will work we focus on proven and well-tried solutions. They should be the first response to making the community safer. There are endless reports in this Parliament. I refer honourable members to the reports of the Standing Committee on Law and Justice chaired by the Hon. Ron Dyer, which examined using social support as a means of preventing crime. If we are going to have an outbreak of concern about law and order I really wish that people would reach for some of those mechanisms as quickly as they would reach for the mechanisms that result in more people being placed in custody, regardless of whether we know those people should be in custody.

The Hon. PETER BREEN [8.12 p.m.]: Like the Hon. John Ryan, I am also living proof that puts the lie to the Hon. David Oldfield's observation that repeat offenders cannot be rehabilitated. As I have said in previous debates in this House, when I was a primary school student at Patrician Brothers, Liverpool, many of my school mates, including the infamous Ivan Milat, were offenders even at the tender young age of 10. Had I gone down the track that they went down—not only Ivan Milat but many others who are still in gaol to this day—I would not have the privilege or the benefit of representing the people of New South Wales in Her Majesty's Parliament. It is really quite frustrating to hear remarks that suggest repeat offenders cannot be rehabilitated. Clearly, they can be, and very often they are.

The Hon. John Ryan said he felt that the legislation may have little or no impact on the criminal justice system or the prisoner population. He said that courts already take into account the matters raised in the bill. I

am not sure whether he is right. As a practising lawyer I have seen magistrates and judges grant bail on many occasions when they would have preferred not to, but the presumption in favour of bail always required them, when they could, to give an offender the opportunity of bail. The legislation cuts across that. Its intention is to remove the presumption of bail. If magistrates and judges follow the second reading speech of the Attorney in the other place they will realise that this is an effort by the Government to offer further protection to the community from the risk of repeat offenders, to use the Attorney's words.

I cannot see how magistrates and judges, in the face of this legislation, will be able to continue to grant bail if offenders fit within its guidelines. It would be a brave magistrate or judge who did that. The Hon. John Ryan also suggested that only 200 people per year would be caught up by the legislation. I have the greatest respect for the Hon. John Ryan, and as Chairman of the Select Committee on the Increase in Prisoner Population he certainly has access to information that I am not aware of, but that statistic is surprising. The Minister suggested that something like 800 people would be affected by the legislation and that it would add 10 per cent to the prisoner population. Ms Lee Rhiannon suggested that it would add 25 per cent to the prisoner population.

The Hon. John Ryan: No-one knows.

The Hon. PETER BREEN: I think that is right. The reality is that we are talking about legislation that is likely to impact substantially on the way justice is administered in New South Wales. We should proceed with some caution. I agree with the thrust of Ms Lee Rhiannon's comments, controversial though they might be: a number of disadvantaged people in the community will be affected by the legislation. The Hon. Ian Cohen made an excellent contribution to the debate. I would recommend that anyone who wants to know anything about these issues read his contribution. The extent to which it covered the important issues, particularly rehabilitation, was extraordinary. He pointed out that sentencing legislation of this kind ought to focus on rehabilitation, and should provide an opportunity for prisoners to get back into the community. The reality is that most prisoners come back into the community.

If our legislation and laws are not directed towards rehabilitation, what purpose is served by allowing prisoners back into the community after they have served their sentences? However, the Bail Amendment (Repeat Offenders) Bill does not focus on rehabilitation, but emphasises instead the importance of punishment. I do not suggest for one minute that people who commit crime should not be punished. Crime is abhorrent, and offenders need to be punished for their transgressions against society. The problem with the bill, as the Hon. Ian Cohen pointed out, is that its underlying principle is to increase punishment, and there is no evidence that this will act as a deterrent or assist rehabilitation. I do not think anyone would disagree that the bill will result in an increase in the prisoner population, although there might be some dispute about the size of such an increase. The bill will cause overcrowding and tension in our gaols. I am a frequent visitor to Goulburn gaol, and I am constantly amazed that more prisoners are not killed or injured because of overcrowding.

Prisoners at Goulburn gaol are now segregated according to their ethnic origin as a direct result of overcrowding. Some 30 or 40 prisoners are forced to exercise in areas smaller than the size of a suburban backyard. This overcrowding comes at a significant cost, not just to the prisoner population but to management and staff at the prison. Honourable members will be aware of press reports of a riot at Goulburn gaol last month. Seven prison officers were injured when prisoners in D wing rioted. One of the prison officers is still listed in a critical condition and, as I understand it, remains in a coma. Honourable members can only imagine the negative effect of this terrible situation on other officers and staff at the prison. I have the highest admiration and praise for prison staff at Goulburn gaol. They deserve better than to be subjected to abuse and physical violence because of problems related to prison overcrowding.

I take this opportunity to say something about the tragedy of people with mental disorders swelling the numbers of our prison population. Often they are repeat offenders simply because prison is the only place they can be accommodated. In Parliament's select committee report on the increase in prisoner population, the Department of Corrective Services identified 40 per cent of prisoners as meeting the diagnosis of having a personality disorder. Referring to the female prison population, the department observed that 39 per cent had previously attempted suicide, 23 per cent were on psychiatric medication and a staggering 73 per cent had been admitted to psychiatric or mental health units.

Prison staff are not trained or equipped to deal with people suffering mental illness and they are not permitted to restrain prisoners except with handcuffs and a waist strap. As a result, prisoners who exhibit psychotic behaviour are placed in solitary confinement, their only protection being a stack hat to prevent them from bashing their skulls on the cell walls. This is a barbaric way to treat human beings, but what are our prison

officers supposed to do when they have neither the training nor the resources to deal with mentally disturbed inmates? This is a common complaint from prison officers. They are not trained for it and do not have the resources for it, yet day after day they are faced with the problem of people behaving in a psychotic way. The only way they can treat them is by putting them into solitary confinement, thus adding to their misery.

We have a growing crisis in New South Wales relating to the accommodation of mentally ill people in prison, and this legislation exacerbates the problem. As a member of Parliament's Select Committee on Mental Health I have drawn the committee's attention to the problem and I am pleased to say that the chairman of the committee, the Hon. Dr Brian Pezzutti, is keenly aware of the issues. So far the committee has more than 180 submissions and many of them are horror stories involving the incarceration of people suffering mental illness.

I referred earlier to the remarks of the Hon. Ian Cohen on the bill and I can add little to what he said. If honourable members are interested in the way the bill adversely affects people who are already disadvantaged, I urge them to read the Hon. Ian Cohen's speech. It says it all. I refer to just one of his references, a letter from the Conference of Leaders of Religious Institutes. This refers to the questionable statistic of 80 per cent of crimes being committed by people who have been previously convicted. The letter reads:

The fact that 80% of crimes are committed by previously convicted people indicates that the current corrections regime has not been successful, either by way of rehabilitation or by way of deterrence, in lowering the crime rate ...

This is the significant part:

Why should more imprisonment work now when recent increases in imprisonment have not?

The bill makes no attempt to grapple with that question. That is the tragedy. We have a significant problem in our community because imprisonment, particularly of people with mental illness, is not working. When we have an opportunity to do something about it we simply ramp up the laws to make them tougher and to make it appear that we are doing something. People are already languishing in gaol on remand and the bill will simply increase the numbers. The Government has suggested an additional 800 repeat offenders will be gaoled as a result of legislation, but the figure could be much higher. This legislation could have a huge impact on the gaol population. If magistrates and judges react to public criticism and the headlines in the *Daily Telegraph*, it is likely to have a significant impact. Judges and magistrates will feel compelled to follow the guidelines strictly and put everyone on remand and in prison until their cases are dealt with.

The logical next step in the Government's law and order campaign is to create different categories of risk for prison staff depending on the level of overcrowding. It is not as though there is no impact on the system of increasing the prisoner population. It has a huge impact on the prison staff and management of gaols. The bill is a huge can of worms for the Government. Repeat offenders and perpetrators of serial crime—I refer to minor offences—will be caught up by this legislation and it will create a problem of gargantuan proportions. I can relate the names of a string of people, including my sister, who would go to gaol under this legislation. If the magistrates and judges follow the legislation, they will have no choice but to put repeat offenders in gaol.

Perhaps because of my background or because of where I spend much of my time, I know many people who have little regard for the law—not because they have contempt for the law per se, but because their circumstances are such that they have made decisions about disability, drugs and their financial situation. People with mental health problems and people who are homeless or unemployed make the decision that they cannot comply with the law. Far be it from me to judge those decisions, but they are a reality in our community, and to further marginalise and agonise these people is a serious mistake. The bill makes no attempt to deal with social dislocation caused by modern society, as it ought to do. It should be part of public policy to recognise that these dislocations and problems that disadvantaged people suffer should be addressed in a positive and constructive way, but the bill does not do that. It should be opposed.

The Hon. RICHARD JONES [8.26 p.m.]: This bill provides that the presumption in favour of bail is to be removed for accused persons, irrespective of the type of offence they have committed, in certain circumstances. It is intended to make it more difficult for offenders to be granted bail. The Government believes these measures will provide a disincentive to offenders to commit further crimes. However, research clearly shows time and again that increased incarceration does not serve as a deterrent. Put simply, people do not commit crimes anticipating they will get caught and, if they are, they have no incentive to rehabilitate or become better prisoners. Under the provisions of the bill, the presumption in favour of bail is removed for persons who are charged with other crimes whilst on bail, on parole, on a bond or community release sentence; persons who have previously committed the offence of failing to appear before a court in accordance with a bail undertaking; and persons who are accused of an indictable offence if the person has been convicted of one or more indictable offences.

In making a determination about the grant of bail the court must consider any special needs of an accused person under the age of 18 or a person with an intellectual disability. Under the bill the court will be able to consider the appropriateness of bailing accused persons, particularly those of an Aboriginal or Torres Strait Islander background, to supervised bail accommodation if they are suitable and a place is available. Clearly there are problems associated with that provision as no bail accommodation exists in New South Wales. I shall address that matter at length in a moment.

The provisions in this bill will increase the already burgeoning prisoner population, which continues to cost the community millions of dollars every year. The final report of the Select Committee on the Increase in Prisoner Population noted that there has been no evidence from agencies such as the Bureau of Crime Statistics and Research to support the proposition that an increase in actual crime is an underlying cause of the increased prisoner population. It was noted that the most significant contributing factor to the increasing prisoner population is the increase in the number of people on remand. As at 30 June 2001 more than 2,000 prisoners were on remand, representing more than a quarter of the prisoner population. That figure has doubled since 1995 and is due in part to increased refusals of bail and, in many cases, changes to the Bail Act that have removed the presumption in favour of bail. The provisions contained in this bill exacerbate the problem by removing the presumption in favour of bail in even more instances.

Worse still, the majority of the people who are held in custody up until their court hearing are ultimately not given sentences of imprisonment. Prison is no longer considered to be a sanction of last resort and the growth in the prisoner population is costing the community an extra \$145 million a year. No reliable research indicates that any of that increase has prevented crime. Furthermore, because a majority of the prisoner population spends a short period of time inside—less than six months in fact—the prison system's ability to provide effective rehabilitation programs is severely disrupted. Community service orders, home detention or probation may be more effective, less expensive measures with better results. A greater focus needs to be placed on these alternative means for sanctioning less serious offenders.

In the Local Court, the number of cases where bail has been refused has doubled from 1994 to 1999. In the higher courts the number of cases where bail has been refused has increased also, by almost 35 per cent. Due to the significant contribution the remand population is making to the increase in the prisoner population, and the consequent increased cost to the prison system, there is obvious benefit in the issue being the subject of specific and detailed study. Persons held in custody on remand are contained under maximum security, which is the most expensive form of custody, estimated at \$64,485 per annum. The measures contained in the bill will significantly increase government expenditure. Doug Humphreys, Director of the Criminal Law Division of the Legal Aid Commission, said:

I believe that there have been a number of changes, particularly to the Bail Act, over a period, which has meant that people who were otherwise entitled to bail now do not get it ... That was brought in by Parliament some years ago ... Some of those people are not found guilty of offences.

Being on remand with bail refused is one of the worst possible features of a civilised society. Some 20 per cent of the full-time gaol population in custody is on remand. The Law Society writes:

In a civilised society, that is a terrible thing, because many of those people eventually will not be convicted. There is no recourse for them usually, unless the prosecution was frivolous or vexatious. Those people on remand can spend up to 18 months or more awaiting trial.

There are a great many people in gaol, perhaps as many as 1,000, who simply should not be there. Court delays negatively influence the remand population. As at 30 June 1999, the median delay from committal to outcome for matters finalised in the District Court was about 400 days. For the Supreme Court it was 600 days. Dr Don Weatherburn of the Bureau of Crime Statistics and Research concluded:

It would be preferable, nevertheless, to be able to formulate proposals for prison diversionary schemes on the basis of some understanding of their potential to divert. This may sound a fanciful hope, but the crucial piece of information we need to enable the required understanding is not, at least in principle, that difficult to obtain.

At the very least, in accordance with these amendments to the Bail Act, appropriate funding for sufficient services and accommodation outside the prison system is absolutely necessary. The New South Wales Aboriginal Justice Advisory Council report "Aboriginal People and Bail Courts in New South Wales" was released last month and expressed grave concern at the number of Aboriginal people who are currently on remand in New South Wales prisons and juvenile detention centres. In the Local Court, figures from 1999 show that almost half of all Aboriginal defendants had their bail dispensed with compared with more than two-thirds of non-Aboriginal people.

More than one-in-ten Aboriginal defendants who were refused bail and in custody on remand had their cases dismissed. In addition, it was found that 45 per cent of Aboriginal people on remand do not receive custodial sentences when their matters were finalised at court. The information also shows that close to half of those people are spending up to one month on remand. The Royal Commission into Aboriginal Deaths in Custody made a number of recommendations in relation to bail and Aboriginal people. The royal commission noted a number of reasons why Aboriginal people may not be able to meet bail conditions. The principal reasons, as noted by the commission, were an inability to get to court because of a lack of available transport; communication barriers between Aboriginal defendants and their legal representatives; a lack of understanding of the bail process; unemployment and poverty; physical or mental disability; and problems of prior convictions.

The advisory council reviewed 100 cases and its findings showed that a number of the problems highlighted by the royal commission continue to occur in New South Wales and continue to affect the ability of Aboriginal defendants to access bail. There are serious problems in the type and quality of information being provided to courts on which to base bail decisions. It is clear from the cases reviewed that courts are often not fully aware of the circumstances of Aboriginal defendants and are often making decisions on poor or part information. It is a common complaint from Aboriginal people that they are not heard in the court process and that the needs and circumstances of Aboriginal defendants are not being adequately communicated to courts.

It is apparent that a significant number of Aboriginal defendants are ignorant of the outcomes of bail courts and the requirements of bail conditions. A significant number of breaches of conditions occur without the knowledge or wilful intent of the defendant. Provisions in this bill allow the court to consider the appropriateness of bailing accused persons, particularly those of Aboriginal or Torres Strait Islander background, to supervised bail accommodation if they are suitable and a place is available. However there is no bail accommodation in New South Wales. Extraordinarily, the Government is making provisions for something that does not exist. The legislation as it exists is clearly flawed.

No-one I have contacted—including the Minister's office directly and groups such as the Indigenous Social Justice Association, the Aboriginal Justice Advisory Council, the Aboriginal Land Council, the Human Rights and Equal Opportunity Commission and the New South Wales Law Society—knows of any bail accommodation for adults. The only facility in existence is one six-bed facility for juvenile offenders, Jabiah, which is based in Mt Druitt. Drug rehabilitation places where bail accommodation can be nominated for adults are insufficiently resourced to provide for a viable option. The Government has made provisions for bail accommodation as an option, but that option does not exist at all. The Indigenous Social Justice Association says:

The Government needs to spend millions of dollars on rehabs and bail centres if they expect this new scheme to even have the expectation of making a difference. This bill will not address the real problems that it attempts to make some changes to. More people will remain in jail because there is nowhere to be bailed to.

The association believes that it would be far better for the Government to deliver proper and workable employment programs, to recognise drug use as a major health problem and to initiate positive social justice programs for Aborigines in New South Wales. The Minister's office assumes that accommodation can be set up or run by community groups, but it will give no commitment to ensuring the accommodation is in existence. The Government does not intend to provide for bail accommodation, it will simply provide that people can go there. This is simply not good enough.

I will move amendments in Committee which provide that the Minister for Corrective Services must ensure that suitable bail accommodation is available. Those amendments were developed in accordance with advice received from the Aboriginal Justice Advisory Council, the Indigenous Social Justice Association, Sydney Regional Aboriginal Corporation Legal Services and the New South Wales Law Society. The Sydney Regional Aboriginal Corporation Legal Service says:

Issues such as the provision of funding for bail accommodation and the sustainability of such funding ... must be considered. Unless appropriate consideration is given, then the option of supervised bail accommodation may turn into a de facto form of imprisonment for Aboriginal people ... The proposed legislation is silent on what occurs to a person refused bail if accommodation is not available but the judicial officer considers the individual suitable for such placement. The reality simply must be, in such circumstances, that bail would be refused.

The Law Society adds that it is extremely concerned that many people—particularly Aboriginal people, women and young people—will be brought into the prison system inappropriately and unnecessarily. It calls for the Government to commit to funding sufficient services and accommodation outside the prison system. The royal commission recommendations were handed down 11 years ago. One of the most important recommendations

spoke of "gaol as a last resort". It was pointed out that if the Government were serious about this recommendation it would take both a large amount of money and commitment. The Conference of Leaders of Religious Institutes [CLRI] represents over 4,000 religious organisations in New South Wales. The CLRI writes that legislation such as this is damaging the position and reputation of Australia's judiciary and that it will further erode public confidence in our current system, while inappropriately discriminating against all past offenders.

Overtuning the presumption in favour of bail merely on the basis of past convictions will remove that right without sufficient examination of the individual's particular situation. Many groups believe that this bill will put New South Wales in breach of Australia's international obligations and that money spent to enlarge the prison system could be better spent on crime prevention through addressing its causes. Clearly, this bill is an inappropriate means of providing a disincentive to offenders, because it simply will not work. The result of this legislation will be that disadvantaged people will suffer as the prison population increases at more cost to the taxpayer. Aboriginal, legal and community groups are in agreement that we must ensure bail accommodation is available. Only then will bail accommodation be a real option. Without it, the cycle of incarceration will continue to perpetuate itself to our detriment. I cannot support the bill as it currently stands. I understand that the Opposition will support my amendment, which has been worked out in conjunction with numerous organisations and individuals.

The Hon. Dr PETER WONG [8.38 p.m.]: The Unity party is committed to community safety and I am sympathetic to the rationale for the Government's Bail Amendment (Repeat Offenders) Bill. It is, indeed, a concern to community members that in some cases people may commit a series of offences while on bail for a similar offence. This is great material for talkback radio and tabloid, and I am sure the Government is sensitive to that. Although I am not sure what Alan Jones has said on the matter, this bill has the hallmark of media-inspired law and order legislation. The Government is keeping up with the Joneses.

The Hon. Dr Brian Pezzutti: Which Jones?

The Hon. Dr PETER WONG: Alan Jones—one Jones. Nevertheless, this bill should be debated on its merits or otherwise. There is merit in taking into consideration the likelihood of the offender reoffending while on bail. Indeed, I am sure that it is taken into account. But balanced against that is the likely benefit or harm of incarceration. Nonetheless, there are cases when magistrates may not get it right, and serial property offences occur while offenders are on bail. Most typically, people with a drug dependency carry out break and enter or other property theft. Therefore, there is a reasonable rationale for this bill.

As other speakers have said, we must also consider issues such as the overrepresentation in gaol of Aboriginal people and young people from lower socioeconomic backgrounds. The Unity party is committed to human rights, and I am concerned about the possible consequences of this legislation. I will be interested to consider amendments put forward by the Hon. Helen Sham-Ho, the Hon. Richard Jones and the Greens. I am concerned that, in getting tough on serial offenders, the Government may unnecessarily lock up people who do not need to be put in gaol. I am concerned that this bill may not be the result of a proper evaluation and policy review. I do not want to be responsible for locking up people for no good reason. I ask the Government to give greater emphasis to dealing with drug-related crime as a health issue, to properly treat addicts and to take away many of the causes of drug-related crime. Treatment will be much cheaper than prison in the long run, and will have a much better chance of producing good and contributing citizens and fewer social problems.

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.41 p.m.], in reply: I thank honourable members for their contributions to this debate. The bill addresses an important issue within the community. Indeed, I think it deals with the issue in such a subtle way that honourable members who made speeches by rote—read their missives from the legal profession—have not looked beyond the points in this bill, which I think is one of the most clever pieces of work I have seen in many years.

The Hon. Peter Breen: I will send a copy of your speech to all judges and magistrates.

The Hon. IAN MACDONALD: You may. The Government regards repeat offenders and the cycle of crime seriously—indeed, all members regard it seriously. The probability of a person committing further offences while on bail for a previous offence, while on parole or while subject to a community order should be reduced with the implementation of this bill. The bill removes the presumption in favour of bail for certain repeat offenders, making it more difficult for those offenders to be granted bail and providing a disincentive to offenders to commit further crimes. However, it is only one step in the reform process. A range of initiatives across government agencies is also being developed to break the cycle of recidivist offending.

Bail remains a matter of ongoing community concern. A proper balance between protection of the community and the rights of the accused, who is legally presumed to be innocent, is an important matter that warrants regular monitoring. This bill aims to target offenders who commit less serious offences and are likely to do so again. Proposed section 9 (b) (1) provides that the presumption in favour of bail is removed for those who are charged with other crimes while on bail, on parole or on a bond, or serving a community release sentence. The bill requires the court to consider also the type of offence, the seriousness of that offence, the number of previous offences and the length of time between offences. The prior criminal history of the person is only one criterion of many that the court must have regard to when making a bail determination.

If the accused person is under the age of 18, has an intellectual disability, has a mental illness or is of Aboriginal or Torres Strait Island descent the court must consider any special needs of the person arising from that fact when assessing the interests of the person in making a determination about the granting of bail. The literature on juvenile reoffending shows that once children are incarcerated in a detention centre the probability of their committing further offences is very high. Therefore, gaol as a last resort for juveniles is very important. The provisions in proposed section 36 (2) (a) simply allow the court to consider the appropriateness of bailing accused persons, particularly those of Aboriginal or Torres Strait Islander background, and to supervise bail accommodation if they are suitable and a place is available.

This is in line with the recommendations made by the Royal Commission into Aboriginal Deaths in Custody in relation to gaol as a last resort. Obviously it is referring to the overrepresentation of Aboriginal persons in custody, to which many honourable members have correctly referred. Provision is made in the bill to review these amendments in 12 months. The Government has dedicated much time in considering the bill and its effects. We are aware that in coming years there may be an increase in the size of the prisoner population. This is regrettable and inevitable if we fail to put in place further reform programs to break the cycle of offending behaviour. The Government's approach to this issue is not that removing the presumption for certain high-risk categories of offenders is solely the answer. As with any complex problem, there must be a multilayered solution.

In response to a couple of points made by the Hon. John Ryan, the legislation will address the serious issue of bail and repeat offenders. The Government makes the distinction that until now the Bail Act dealt specifically with serious repeat offenders. The bill, on the surface, broadens this to include all offenders when a repetitious nature is involved. These amendments are in direct response not only to police concerns but also to the Bureau of Crime Statistics and Research report on persons failing to appear. The amendments are well founded and are based on evidence. The honourable member should not fear that the criminal names index will be used as a sole identifier of the accused person. For the past three years the courts and police have been working solidly to ensure that criminal histories are accurate and up to date. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Schedule 1

The Hon. IAN COHEN [8.48 p.m.]: I move Greens amendment No. 1:

No. 1 Page 3, schedule 1. Insert after line 4:

[2] Section 8 Right to release on bail for minor offences

Insert after section 8 (3):

(3A) Subsection (2) (a) (i) and (ii) do not apply in respect of an offence under section 4 or 4A of the *Summary Offences Act 1988*.

Last month the Aboriginal Justice Advisory Council [AJAC] released a report entitled "Aboriginal People in Bail Courts in NSW". Many of these amendments, including this one, implement the recommendations of the AJAC. The report found that Aboriginal people are more likely to proceed to the heavier end of the bail spectrum. For instance, in 1999, of appearances finalised in the New South Wales Local Court, 10 per cent of

Aboriginal defendants were refused bail compared to 4 per cent for non-Aboriginal people. While 83 per cent of the Aboriginal people who were remanded in custody later pleaded guilty or were convicted of at least one offence, approximately 11 per cent of Aboriginal defendants who had had bail refused and were in custody on remand had their cases dismissed—that is, they were found to be not guilty of the offence with which they were charged. In effect, they were wrongfully imprisoned—rather than innocent until proven guilty, they were guilty until proven innocent.

In addition to the 11 per cent of Aboriginal people who were found not guilty, 45 per cent of Aboriginal people on remand did not receive a custodial sentence when their matter was finalised. In its briefing note on the bill to crossbench members the Law Society pointed out how the current bail system disadvantages Aboriginal and Torres Strait Islanders, particularly young people. The Law Society pointed out that police and the court often take homelessness or the lack of appropriate accommodation into consideration when deciding whether to grant bail to a young person. Although the Bail Act specifies that not living with a parent or guardian should not be a consideration for determining bail, it does not seem to extend to situations where the young person has nowhere to live. The Law Society concluded:

Community options for young people, such as bail hostels, need to be enhanced, particularly for Aboriginal young people living in rural and remote areas or areas where there are a lack of support services available.

In the mean time, legislative mechanisms such as this—designed to keep categories of Aboriginal and Torres Strait Islander people who clearly should not be in gaol out of gaol—should be implemented. This amendment implements recommendation No. 4 of the AJAC report, which states:

Remove the potential for over policing and discriminatory policing decisions to influence bail by amending the Bail Act 1978 to provide for an automatic bail entitlement for offensive language and behaviour charges.

The recommendation ensures that there is a right of release on bail for individuals charged with offensive conduct or offensive language except in very limited circumstances, such as a person who is convicted of the offence or the offence is stayed. The Greens are of the view that it is inappropriate to refuse bail for these very minor offences. Offensive behaviour charges are laid disproportionately on Aboriginal and Torres Strait Islander people. The AJAC found that policing public order offences, such as offensive language and conduct, has severe impacts on Aboriginal people. On average Aboriginal people are 15 times more likely than the rest of the New South Wales population to be arrested and charged with offensive behaviour and more than 80 times more likely to be arrested and charged in some local government areas. The AJAC also found that there is a clear linkage between these charges and the laying of further charges, such as resist arrest and assault police.

The consequences of a higher number of Aboriginal people being prosecuted for offences, particularly minor public order offences, means a higher proportion of Aboriginal people going through the bail process, a higher number of people failing to meet bail conditions and a higher number caught up in the criminal justice system. Discriminatory policing practices and the heavy policing of some Aboriginal communities—for example, Bourke, Dubbo, Moree Plains, Brewarrina, Blacktown, Walgett, South Sydney and Coonamble—means that more Aboriginal people are likely to be arrested and charged for these offences. These discriminatory practices are often unintentionally continued and compounded by courts refusing defendants bail on the ground of prior convictions. An automatic grant of bail for these offences would significantly reduce the number of Aboriginal and Torres Strait Islander people being imprisoned for these very minor offences. I commend Greens amendment No. 1 to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.53 p.m.]: The Government does not support this amendment. Section 8 (2) sets out the exceptions to entitlements to bail for certain minor offences. It includes accused who have previously failed to comply with a bail undertaking or condition in respect of an offence for which they are currently before the court or accused who are incapacitated by injury, drugs or otherwise so as to present a risk to themselves. The presence of this exception does not mean that the accused will not get bail; it simply removes the entitlement to bail for minor offences. The person either gets bail under section 8 or is excluded and is determined under section 9, in which case the court will take into account these issues.

In relation to section 8 (2) (a) (i), where people fail to comply with previous bail conditions in respect of the events before the court, there is a good indication that they will fail to comply with future bail conditions. Courts should not be prevented from taking this fact into account. It should be open to the court to decide whether these matters are significant enough to warrant bail refusal. Section 8 (2) (a) (ii) provides safeguards to ensure that bail is given only where appropriate and where a person is not at risk of harm. It is about protecting a person; it is not about oppressing a person.

Amendment negated.

The Hon. IAN COHEN [8.55 p.m.], by leave: I move Greens amendments Nos 2 and 3 in globo:

No. 2 Page 3, schedule 1. Insert before line 5:

[2] Section 8 Right to release on bail for minor offences

Insert after section 8 (4):

- (5) Subsection (2) (a) (i) and (ii) do not apply if the person accused of an offence is under the age of 18 years.

No. 3 Page 3, schedule 1 [3]. Insert after line 24:

- (4) This section does not apply in respect of the grant of bail to a person who is under the age of 18 years.

Amendment No. 2 ensures that juvenile offenders are entitled to a presumption in favour of bail except if they have committed a serious indictable children's offence, a juvenile is convicted of the offence or the offence is stayed. It is important that juveniles are treated differently to adult offenders. This is recognised under the Young Offenders Act, which seeks to ensure that young offenders are provided with an alternative process to court proceedings. A number of studies have researched juvenile offending. For instance, the Youth Justice Coalition in its landmark report entitled "Kids in Justice: A Blueprint for the 90s" found that most juvenile crime is episodic and transitory. It tends to be local, unplanned and not repeated.

Statistics show that 70 per cent of young people who offend once, appear in court and do not subsequently reoffend. Of the remaining 30 per cent who reoffend, 60 per cent do not reoffend a third time. In addition, the majority of matters for which juveniles offend are fairly minor. Other statistics show that there are high recidivism rates for those incarcerated. According to the Youth Justice Coalition recidivism rates are between 60 per cent to 70 per cent for those incarcerated. A 1992 report of the Standing Committee on Social Issues inquiring into juvenile justice in New South Wales found that incarcerated young people have a 90 per cent chance of proceeding to the adult criminal justice system. Specifically, it found:

- there is a greater recidivism of comparable offenders after institutionalisation than after probation;
- remand in custody increases the likelihood of recidivism

These kinds of studies and reports demonstrate that incarceration can cause recidivism as young people are exposed to an environment that is conducive to the learning of inappropriate behaviours. The best way to avoid recidivism is to ensure that young people are incarcerated only as a last resort. The Greens are concerned that bail refusal means that more young people are incarcerated, creating unnecessary recidivism in young people. Except in the most serious of cases young people should always be given bail. They should be given the encouragement and opportunity to move away from their usually brief episode of juvenile offending. This is best done by allowing young people to continue educational or training programs, realising employment opportunities and maintaining community ties. This is the most effective way of ensuring young people commit no further crimes.

Locking up young people does not facilitate these important links to the community and community ties. Holding juveniles in remand centres alienates them from the community and is a recipe for further juvenile offending. The Law Society in its briefing paper to crossbenchers pointed out the truly negative impacts the current system is having on Aboriginal and Torres Strait Islander young people. From finalised Children's Court appearances and from the Department of Juvenile Justice's children in detention system between 1997 and 1999 the Law Society found:

- 26% of the total bail refused during this period were Aboriginal and Torres Strait Islander young persons
- Bail refused has increased for Aboriginal and Torres Strait Islander young persons by 15% between 1997 and 1999
- Of the Aboriginal and Torres Strait Islander young persons bail refused, 86 percent of these were for "less serious offences". This was the highest percentage of all cultural groups
- The number of ATSI young persons bail refused has almost doubled in some areas of NSW. For example, the southern cluster increased from 83 in 1997 to 152 bail refused in 1999.

As can be seen, previous amendments to the Bail Act have impacted in a very negative way on Aboriginal and Torres Strait Islander people. This amendment will ensure that all juvenile offenders have a presumption in favour of the granting of bail unless they have committed a serious children's indictable offence. It will help

reduce recidivism and give young people a second chance. Amendment No. 3 ensures that the repeat offender provisions contained in the bill will not apply to juveniles. For all the reasons outlined in the previous amendment, it is far better that young people are granted bail rather than refused bail and remanded in custody. It is essential that young people be rehabilitated and be given a second chance. The best way to achieve this is by ensuring that young people remain in the community maintaining positive community links such as employment, education and training. I commend Greens amendments Nos 2 and 3 to the Committee.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.59 p.m.]: I put on record that the Australian Democrats also support these amendments that prevent children from being trained in crime.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.00 p.m.]: I thank honourable members for their contributions to these amendments. The Government does not support Greens amendment No. 2. Juvenile offenders who are repeat offenders should not be excluded from these provisions. It is open to the court to consider their needs but there is no acceptable rationale to exclude them totally. The Government does not support Greens amendment No. 3, in relation to which a similar point can be made. The Bail Act has always applied to juveniles. There is no reason to exclude them simply in respect of these offences.

Amendments negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.00 p.m.]: I move the Australian Democrats amendment:

Page 3, schedule 1 [3], line 17. Insert "imposed in relation to an indictable offence (whether dealt with on indictment or summarily)" after "bond".

The bill basically removes the presumption in favour of bail for a person accused of an offence committed while on a good behaviour bond. Good behaviour bonds may be imposed when the court does not proceed to a conviction for many summary offences. The Law Society Criminal Law Committee regards it as inappropriate that a presumption in favour of bail is removed simply because a person is the subject of a good behaviour bond. This amendment will not detract from the operation of the legislation. However, the amendment may help to ensure that people who have never been convicted of a serious offence or experienced imprisonment are not exposed unnecessarily to the violence of the system. I understand that the Government does not want to support this amendment as it believes the court's discretion is adequate protection. If that is the reason for not supporting my amendment surely the Government ought to withdraw the bill.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.01 p.m.]: The Government does not support the amendment. The Government will resist all attempts to water down the provisions contained in this bill. It is argued that bonds, being sentences of the court, must be respected. A breach of a bond suggests a disregard for the law that would not inspire confidence that the offender would respect bail conditions. Judicial officers may still take into account the fact that a breach may have been minor or technical when deciding whether to grant bail.

Amendment negatived.

The Hon. HELEN SHAM-HO [9.02 p.m.]: I move amendment No. 1 circulated in my name:

No. 1 Page 3, schedule 1 [3], line 23. Omit "previously". Insert instead ", within the immediately preceding 5 years,".

This amendment to section 9B (3) seeks to reinstate the presumption in favour of bail when an accused person has not been convicted of an offence within the immediately preceding five years. In his second reading speech the Attorney General stated that the bill was "designed to target repeat offenders at the bail stage". However, in practice the bill may have the unintended consequence of applying to an accused person who may have been convicted of an offence in the past but has had a lengthy period of crime-free behaviour. This is because the bill fails to take into account the mitigating time factor between a previous conviction and the current charge. I believe that that is unfair and unjust. My amendment will ensure that only persons who have a continuous pattern of offending behaviour will be denied the presumption in favour of bail.

Five years is regarded as a significant period of crime-free behaviour in many other criminal provisions, principally the Road Transport (Safety and Traffic Management) Act 1999. Under that Act maximum penalties, including both fines and periods of imprisonment, are significantly increased if a traffic offender has been previously convicted of a major traffic offence within five years of committing the subsequent

offence. It is an arbitrary date of five years. I acknowledge that section 32 (1) (b) (vi) of the bill requires a court to consider the number of previous offences an accused person has committed and the length of time between those offences when determining an application for bail. However, my amendment will provide clarity and certainty for both the courts and the accused person. The amendment will therefore give effect to the object of the bill and ensure that the presumption in favour of bail is only denied to a person who is actually a repeat offender. The Law Society supports this amendment. If the Government does not support it, I want to know why.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.04 p.m.]: The Hon. Helen Sham-Ho deserves to know why. The Government will resist all attempts to water down the provisions contained in this bill. It is not acceptable to limit the time for which prior convictions can be taken into account. The court should be able to look at the person's whole record in order to make a considered and careful assessment of their entitlement to bail, particularly when there is evidence to suggest that they have made a career out of criminal activity. Nominating a time frame is simply an arbitrary exercise and to do such a thing could, in effect, lead to artificial crime-free periods. For example, if an offender has been in gaol for the past five years, his or her prior criminal history would not be relevant under this proposal as the criminal behaviour occurred prior to the gaol sentence. This places more serious offenders in a better position to be granted bail than less serious offenders. It is illogical and absurd—I repeat, absurd—and moreover it is an unnecessary fettering of judicial discretion.

Amendment negated.

The Hon. IAN COHEN [9.06 p.m.], by leave: I move Greens amendments Nos 4 and 5 in globo:

No. 4 Page 3, schedule 1. Insert after line 25:

Omit section 32 (1) (a) (i). Insert instead:

- (i) the person's background and community ties, as indicated (in the case of a person other than an Aboriginal person or a Torres Strait Islander) by the history and details of the person's residence, employment and family situations and the person's prior criminal record (if known),
- (ia) the person's background and community ties, as indicated (in the case of an Aboriginal person or a Torres Strait Islander) by the person's ties to extended family and kinship and other traditional ties to place and the person's prior criminal record (if known),

[5] Section 32 (1) (b) (v) and (vi)

No. 5 Page 3, schedule 1. Insert "or is an Aboriginal person or a Torres Strait Islander," after "years," in line 27.

Amendment No. 4 implements the first recommendation of the Aboriginal Justice Advisory Council [AJAC] report which specifies:

Amend section 32(1)(a)(i) of the Bail Act 1978 to remove the reliance on employment and residence in assessing a person's community ties and to include reference to traditional Aboriginal extended family and kinship ties and traditional ties to place.

Magistrates are currently using western concepts of community ties when determining bail applications. A person who does not have a job, have their name on a lease or permanently reside in a specific house is perceived to have poor community ties, despite having significant family or spiritual connections to a place. In particular, with regard to employment, the average unemployment level for Aboriginal and Torres Strait Islander [ATSI] people is more than 22 per cent. Any measure of community ties that relies on a person's employment status will severely disadvantage ATSI people. The AJAC report found that a number of Aboriginal defendants clearly have problems accessing transport to and from court locations. Bail conditions that require people to report regularly or daily to police in locations outside of where they currently reside, due to lack of transport, often result in Aboriginal people breaching these conditions because they are physically unable to attend the police station. Getting an unworkable bail condition changed can be very difficult if the defendant lives in a location that does not have a magistrate or justice. In those circumstances it is often impossible to have the condition altered and the condition is invariably breached.

Another problem that can occur is when Aboriginal people are refused bail by police in a town without a courthouse and are transported hundreds of kilometres to the nearest courthouse to have their bail determined. There have been cases of Aboriginal defendants being granted bail but who are unable to return home due to lack of transport or money. They then commit further offences such as minor thefts or stealing a vehicle to enable them to get home. Unsuitable conditions can also be a problem. Often curfews are imposed that are inappropriate. These conditions may limit a person's ability to perform their cultural responsibilities, such as

taking care of relatives, attending funerals or participating in other family and community functions. The AJAC report concludes:

There is a serious need to change the criteria used to determine bail so that it can more adequately and effectively meet the needs of Aboriginal communities.

It is clear from the cases reviewed that courts are often not fully aware of the circumstances of Aboriginal defendants and are often making decisions on poor or part information.

This amendment seeks to ensure that an ATSI person's background and community ties to extended family, kinship and other traditional ties to a place are to be taken into consideration when determining a bail application, rather than a person's background and community ties according to the history and details of the person's residence, employment and family, as currently required by the legislation.

The bill inserts new section 32 (1) (b) (v) into the Bail Act to require a court or authorised officer, when determining whether to grant bail to an offender who is a child or has an intellectual disability, to take into account any special needs of the offender. Amendment No. 5 simply adds Aboriginal and Torres Strait Islander offenders to the list of offenders who may have special needs. Throughout its report the AJAC alludes to the fact that Aboriginal and Torres Strait Islander offenders have special needs and circumstances that should be considered. Similarly, the Select Committee on the Increase in Prisoner Population inquiry singled out certain groups, including indigenous Australians, as being overrepresented in the criminal justice system. Clearly those individuals identified by the report have special needs that should be addressed. The report states:

Another important finding, which has been made by the Committee and many others over and over again is that certain groups such as indigenous Australians, people with intellectual disabilities and people with mental illness are overrepresented in the criminal justice system. The continued overrepresentation of indigenous Australians is a particular concern in view of the fact that it has been ten years since the Royal Commission into Black Deaths in Custody.

The amendment specifies that the special needs of Aboriginal and Torres Strait Islander people must be taken into consideration when determining bail applications. I commend the amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.11 p.m.]: The Government supports Greens amendments Nos 4 and 5. The premise of the amendment to the section 32 criteria—which is amendment No. 4—is that the Aboriginal community acknowledges unique cultural and kinship ties. The probability of whether a person will attend his or her next court date is one of the most important issues for a court to consider when determining whether to grant bail. The Greens argue that amendment No. 4 allows the court to acknowledge what has been researched, documented and accepted in relation to Aboriginal communities: Aboriginal people acknowledge and respect an extended range of family and cultural connections and these factors play a significant part in establishing an Aboriginal person's community attachment. Consequently, we support the concepts inherent in this amendment.

Amendment No. 5 has the same aim as the bill in relation to offenders who may face unique disadvantages when dealing with the criminal justice system and for whom support services are available to assist them to achieve an appropriate outcome. This amendment will add Aboriginal offenders to the category of people such as juveniles and people with intellectual disabilities, so that the court can consider their special needs when making determinations in relation to bail. The amendment is not inconsistent with the bill in its current form and does not affect the removal of the presumption in favour of bail. The Government supports the amendments.

Reverend the Hon. FRED NILE [9.12 p.m.]: I do not oppose the amendments, but section 32 (1) (a) (i), which that amendment No. 4 seeks to amend, is not in the bill. It was in the original draft of the bill but I thought we could amend only the bill before the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.14 p.m.]: I am told that Parliamentary Counsel has considered those issues. Parliamentary Counsel has advised that the bill can be amended in this way and has assisted the Greens in drafting the amendment.

Reverend the Hon. Fred Nile: I am seeking a ruling from the Chair.

The CHAIRMAN: Order! Section 32 of the Act refers to schedule 1. I am advised that, as this is an amending bill, the amendment is in order.

Amendments agreed to.

The Hon. HELEN SHAM-HO [9.15 p.m.], by leave: I move my amendments Nos 2 and 3 in globo:

No. 2 Page 3, schedule 1 [4], line 28. Insert "or is mentally ill" after "disability".

No. 3 Page 5, schedule 1 [9], line 17. Insert "or who are mentally ill" after "disability".

These amendments seek to expand section 32 (1) (b) (v) of the bill to require the courts to consider the special needs of a person who is mentally ill when determining a bail application. The section currently provides that a magistrate must consider the special needs of a person who is under the age of 18 or who is intellectually disabled. My amendments recognise that mentally ill persons constitute a class of vulnerable persons who may have special needs in relation to a bail application. In their speeches during the second reading debate many honourable members referred to the inappropriateness of placing a mentally ill person within the general prison system. Therefore, I am confident that honourable members will support my amendments that amend this section to make it clear that the court is required to consider the special needs of mentally ill persons when dealing with a bail application.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.16 p.m.]: I express my support for these amendments in the strongest possible terms. I believe the worst place for a mentally ill person is the criminal justice system, which simply does not have the facilities or the knowledge to deal with mental illness and will exacerbate the problem considerably. Mentally ill people who come to the attention of the criminal justice system should receive treatment, not a gaol sentence. I urge honourable members to support the amendments.

The Hon. IAN COHEN [9.17 p.m.]: I also support the amendments moved by the Hon. Helen Sham-Ho. All honourable members, and the community generally, are appalled when the criminal justice system is used as a repository for the mentally ill.

Reverend the Hon. FRED NILE [9.17 p.m.]: I support the objective of the amendments. However, as far as I am aware, mentally ill people are not supposed to be imprisoned.

The Hon. Dr Brian Pezzutti: It happens all the time.

Reverend the Hon. FRED NILE: I know that it happens, but it should not. I wonder whether, by accepting these amendments, we are saying that we are happy about mentally ill people being sent to prison. That should not be accepted.

The Hon. RICHARD JONES [9.18 p.m.]: I also support the Hon. Helen Sham-Ho's amendments. We must not use prisons as warehouses for mentally ill people.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.18 p.m.]: The Government supports amendments Nos 2 and 3 moved by the Hon. Helen Sham-Ho. The premise of the amendments is to ensure that the special needs of offenders with a mental illness are taken into account by the court. The proposed amendments sit logically in the bill in the form in which it was introduced—that is, with the identification of other categories of offenders, such as juveniles and people with intellectual disabilities.

The Hon. HELEN SHAM-HO [9.19 p.m.]: I place on record my appreciation of the support of the Committee.

Amendments agreed to.

The Hon. IAN COHEN [9.20 p.m.], by leave: I move Greens amendments Nos 6 and 7 in globo:

No. 6 Page 4, schedule 1. Insert after line 7:

[5] **Section 32 (7)**

Insert after section 32 (6):

- (7) In considering a person's prior criminal record for the purposes of subsection (1) (a) (i) and (ii), an authorised officer or court is not to take into account the following offences:
 - (a) any summary offence of which the person was convicted more than 5 years before the date the bail determination is being considered,
 - (b) any offence under section 4 or 4A of the *Summary Offences Act 1988*,
 - (c) any offence under section 51 of which the person was convicted more than 5 years before the date the bail determination is being considered.

No. 7 Page 4, schedule 1. Insert after line 24:

[8] Section 37 Restrictions on imposing bail conditions

Insert "is not appropriate and" before "it is not likely to" in section 37 (3).

Amendment 6 implements recommendation 5 of the report of the Aboriginal Justice Advisory Council [AJAC], which specifies:

Amend section 32 (1) (a) (i) of the Bail Act 1978 to provide a definition of prior offences that excludes offensive language and behaviour offences and excludes summary offences more than 5 years old, and excludes previous failures to appear more than 5 years old.

The report points out:

A significant factor in the high number of Aboriginal people on remand is the impact of previous criminal convictions on bail determinations. In almost 80% of the cases reviewed where bail was refused, criminal history was cited as a significant reason for that refusal.

This amendment will ensure that only summary offences and failures to appear in the last five years—section 51 offences—could be taken into consideration and that no offensive behaviour offences—section 4 and 4A Summary Offences Act offences—could be taken into consideration. Amendment No. 7 implements part of recommendation 2 of the AJAC report, which specifies:

Amend section 36 (2) of the Bail Act 1978 to make the imposition of a financial surety or security a provision of last resort and only where other conditions are inappropriate.

The report found that with regard to Aboriginal and Torres Strait Islander people the use of financial securities varied from location to location. For instance, one location almost never required securities whereas in two other locations they were required 60 per cent to 90 per cent of the time. Also, the level of security varied greatly from place to place despite the defendants having virtually the same circumstances. The average amount of security varied by almost 200 per cent between locations for relatively the same offences, the circumstances of the offence and the offender, the reasons stated and levels of income. The report concluded:

There is need for a greater degree of consistency in the use of financial securities as a part of bail. Further, a real need to ensure that those securities, if used, are determined on a fair and sound basis, specifically that the level and amount of security or surety is set equitably as a proportion of income or wealth to ensure that they don't discriminate or disproportionately disadvantage the poorest parts of the New South Wales community.

This amendment simply ensures that a financial condition will not be imposed unless it is inappropriate to impose a non-financial condition. I commend Greens amendments 6 and 7 to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.22 p.m.]: The Government does not support Greens amendment 6. The amendment is unnecessary. The court has always had the discretion to take into account the nature of a person's criminal record. Obviously, persons with a summary offence conviction over five years old will not be considered in the same way as a person with an indictable offence conviction that is 12 months old. All that the bill proposes is to remove the presumption in favour of bail in relation to repeat offenders committing indictable offences. In respect of the section 51 offence being taken out of the equation, it goes against the spirit of the bill to remove from consideration the offence of failing to appear in accordance with a bail undertaking. The problems with persons failing to appear have been highlighted during the debate. The Government would not support any amendment that watered down those provisions.

The Government does not support amendment 7 either. It relates to surety conditions on bail, with or without security, of the accused or an acceptable person. The proposed amendment would not particularly change the practical effect of subsections (2) and (3) of section 37, which basically discourage any overly onerous condition or any condition that is unlikely to serve a legitimate purpose under the Bail Act. This amendment means nothing, and it does nothing. If something is not likely to achieve a particular purpose—which is already in the Act—it is arguable that it is not appropriate. There is no point in tinkering when nothing is achieved. Consequently, the Government will oppose the amendment.

The Hon. JAMES SAMIOS [9.24 p.m.]: The Opposition does not support the amendments.

Amendments negatived.

The Hon. RICHARD JONES [9.24 p.m.]: I move my amendment as circulated:

Page 4, schedule 1 [7]. Insert after line 24:

- (2B) The Minister for Corrective Services is to ensure that adequate and appropriate accommodation for persons on bail is available for the purposes of the placement of persons on bail.

The bill allows the court to consider the appropriateness of bailing accused persons, particularly those of Aboriginal or Torres Strait Islander background, to supervised bail accommodation if they are suitable and places are available. However, at the moment no bail accommodation exists in New South Wales for adults. The Indigenous Social Justice Association, the Aboriginal Justice Advisory Council, the Human Rights and Equal Opportunity Commission, the Sydney Regional Aboriginal Corporation Legal Service, the Conference of Leaders of Religious Institutes of New South Wales and the New South Wales Law Society are not aware of any bail accommodation in existence in New South Wales for adults, and there is only a six-bed facility for juvenile offenders at Mount Druitt.

The provision of bail accommodation was one of the unanimous recommendations of the 2000 and 2001 reports of the Select Committee on the Increase in Prisoner Population. The Government's initiative in this bill, which provides that accused persons may be bailed to bail accommodation, is a laudable one. However, it is incomplete as it does not ensure that there are places to go to. The Minister said in his second reading speech in the other place:

The availability of supervised bail accommodation and the suitability of the accused person to be bailed to this type of accommodation allows the court to both strengthen existing requirements of bail and divert offenders who might otherwise be incarcerated.

This is particularly important for vulnerable accused persons such as juveniles, intellectually or mentally disabled persons, or persons of Aboriginal or Torres Strait Islander backgrounds.

The Minister knows that persons may be incarcerated if bail accommodation is not available. My amendment simply provides that the Minister for Corrective Services is to ensure that suitable accommodation is available. This does not mean it has to be accommodation that is provided by the Department of Corrective Services; it could be accommodation provided by a community organisation or church group. If there is no bail accommodation, people will remain on remand in gaol. It is as simple as that. Gaol is worse than bail accommodation; it is also more expensive, and that is an undeniable fact.

This amendment will not prevent community groups, family members, churches and so on from providing bail accommodation, as the Government has claimed in a memorandum it has circulated about my amendments. The arguments that the Government has provided to me are clearly arguments that there should be no bail accommodation at all. Basically, the Government is saying that "if we have to provide bail accommodation, all these awful things will happen". No indigenous, legal, religious or community organisation to which I have spoken agrees with the Government. Everyone reports that awful things happen when people are kept on remand when they should not be there.

The Government's opposition to my amendment is an opposition to bail accommodation generally. Its arguments about why bail accommodation does not work and widens the net are not based on research or fact at all. It is inappropriate that the Government makes provisions for bail accommodation, and sells it as an alternative in this bill, if no bail accommodation exists at present. It is obvious that if no accommodation options exist when considering bail for people, the court will place those people on remand. Aboriginal, legal, church and community groups are calling for us to take action and ensure that adequate and appropriate bail accommodation exists.

I am not saying that the Minister has to provide accommodation, merely that something has to be available. The Government argues that if my amendment is adopted, accused persons will be in danger of not being granted bail at all. My response is this: Bail accommodation is available to magistrates only in cases where eligibility for bail is, in the magistrate's opinion, dependent upon availability of appropriate accommodation. This would be the framework within which the service would be provided. Bail accommodation has been provided by government bail officers overseas and at various times under the aegis of Probation and Parole in New South Wales. It should not be an ad hoc service, but should be automatically available to all those denied bail on the grounds of accommodation.

The Government argues that there is a risk, when the department provides accommodation that is not part of a correctional centre, that it will be considered a secure environment or one with curfews or many

restrictions, and that will make the accommodation a form of custody. The Government says that this will make the notion of bail an absolute nonsense. Our response is this: The degree of supervision provided under bail conditions should be determined by the magistrate with reference to information provided by court officers regarding the applicant's flight and safety risk. It must have nothing to do with Corrective Services or government-provided accommodation. Bail conditions must be set as a two-stage process—security requirements followed by method or manner of provision.

The Government also argues that facilities in remote areas may not be available and cites this as an argument against bail accommodation. My response is that the argument is a distraction. The argument of not being able to provide the same services to everybody in this State can never be used for refusing to provide services where possible. There is no requirement that the Government provide accommodation, only that the Minister ensures availability. If a person's home is not appropriate for a reasonable reason, and cannot be made appropriate, then the Department of Corrective Services should work with the Department of Housing, local churches, the Department of Community Services and other bodies to ensure that suitable accommodation is available.

If a person is not eligible for bail by virtue of his or her own resources, without the Minister's help such a person would be imprisoned far from family, work and support, if a prison was not nearby. The provision of an appropriate residence would prevent this from happening, whether the department provides or facilitates the provision of accommodation. The Government speaks of such provisions having a net widening potential, but that argument is an old bugbear.

The issue is addressed like this: If the court regards hostels as more restrictive than home or other community alternatives, and these are not provided for separately—that is, if a person is not known to be a danger but does have a poor bail record, they are eligible for the secure hostels; but there is a presumption in favour of the lowest security possible unless there is a reasonable belief of risk of flight—then net widening is a possibility. Otherwise, if the facilities found, resourced or provided by the department are of equal security and are available only if the person's home or own arrangements are not appropriate, then net widening should not be a problem. I commend the amendment to the Committee. I think it is really important. It will make the legislation actually work.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.31 p.m.]: I support the amendment. The memorandum from the Hon. Bob Debus referring to people having to go to hostels from the Department of Corrective Services is not correct. The position is merely that the Minister has to ensure that accommodation is available. Clearly, it would be better if accommodation were provided by a non-government organisation, such as the Salvation Army or other organisations, and for interventions to take place while people are in bail hostels. But if no resources are put into the provision of such accommodation, obviously that will not be an option for the magistrate to consider.

The idea that this amendment opens the door to net widening in the absence of the option of bail hostels is simply absurd. There are clearly not enough bail hostels and often there is no alternative. In cases involving a person who is drug affected, a period of intervention might be extremely helpful, but it will not happen if the provision of accommodation is not funded. This amendment must be supported.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.32 p.m.]: The Government does not support the amendment. It would be counterproductive and would have a major impact upon public resources. Currently, during the course of bail hearings it becomes more than apparent whether accommodation will be an issue for a particular offender. Every attempt is made by Legal Aid solicitors, or the accused's representative if Legal Aid is not involved, or by the Department of Corrective Services in relation to probation and parole, with assistance in cases from the Salvation Army and other groups, to find appropriate accommodation. If appropriate accommodation cannot be found, the person may be refused bail. If the amendment is accepted, the taxpayer would become responsible for supporting offenders on bail, perhaps even in situations in which the offender might have other options for securing accommodation.

The Local Court sits at approximately 160 locations across New South Wales. This provision could be read to suggest that the Department of Corrective Services should provide accommodation at least in as many locations, perhaps requiring the department to rent private accommodation. It is not the State's responsibility to ensure that offenders get bail. Offenders should prove that they are entitled to or deserve bail. When accommodation is the issue that prevents an offender from being granted bail, the offender's legal representative or the Department of Corrective Services would have to find the offender appropriate housing, such as

accommodation with family members or bail accommodation. However, to make that a condition in the legislation would take serious resources away from other deserving programs run by the Department of Corrective Services and from other deserving housing recipients.

The Hon. JAMES SAMIOS [9.34 p.m.]: The Opposition supports the amendment.

The Hon. HELEN SHAM-HO [9.34 p.m.]: I express my very strong support for the amendment moved by the Hon. Richard Jones. What the Parliamentary Secretary said was somewhat inconsistent.

Ms Lee Rhiannon: He is wrong.

The Hon. HELEN SHAM-HO: Yes, he is wrong. I agree with Ms Lee Rhiannon. The Parliamentary Secretary is wrong because however the bail applicant is treated, he or she will have to be accommodated, either in gaol or in other accommodation. Is it not better to provide an alternative to prison?

The Hon. Dr Brian Pezzutti: It is cheaper!

The Hon. HELEN SHAM-HO: It is cheaper, and better.

Amendment agreed to.

Ms LEE RHIANNON [9.35 p.m.]: I move Greens amendment No. 8:

No. 8 Page 4, schedule 1. Insert after line 24:

[8] Section 63

Insert after section 62:

63 Reports relating to operation of bail and other matters

- (1) The Minister must cause the Director of the Bureau of Crime Statistics and Research to investigate and report to the Minister on the following matters:
 - (a) the impact of the exceptions to the presumption in favour of bail in sections 9 and 9B,
 - (b) whether there has been an increase in the rate of refusals of bail, within the period of 5 years preceding the date of assent to the *Bail Amendment (Repeat Offenders) Act 2002*, and the impact of any such increase on the remand population in the State prison system.
- (2) A report made to the Minister under this section is to be tabled in each House of Parliament not later than 12 months after the date of assent to the *Bail Amendment (Repeat Offenders) Act 2002*.

During this debate much has been said about the excellent work of the Select Committee on the Increase in Prisoner Population, which issued a number of recommendations, including a call for further research into issues of bail and bail refusal. The amendment before the Committee picks up recommendations 2 and 3 of that committee's report. The amendment will require a report on the first 12 months of bail operations under the new regime. Surely the Government can see its way clear to support this amendment. After all, the amendment does not change the intent of the bill. All it does is allow for research to be conducted on how the bill is operating in this State. Such research would provide valuable information to guide future policy and an assessment of the new bail system that will shortly be introduced.

If the Government is willing to impose this legislation on the people of New South Wales, surely it should have the courage of its convictions and be willing to allow its much-lauded bail changes to be monitored and assessed. I urge the Government to do the right thing. If this amendment is not backed, one can conclude only that the Government does not want its new bail regime scrutinised. I look forward to hearing arguments from the Hon. Ian Macdonald on this amendment. I commend the Greens amendment to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.37 p.m.]: The Government does not support the amendment moved by the Hon. Lee Rhiannon. The bill contains a review provision. It requires the Minister to review the operation of the regime as soon as possible after 12 months operation and report to both Houses within 12 months at the end of the 12-month period under review.

Amendment negatived.

Schedule 1 as amended agreed to.

Title agreed to.

Bill reported from Committee with amendments and report adopted.

Third Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.38 p.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 24

Mr Della Bosca
Mr Dyer
Ms Fazio
Mrs Forsythe
Mr Gallacher
Miss Gardiner
Mr Harwin
Mr Hatzistergos
Mr M. I. Jones

Mr Kelly
Mr Macdonald
Mr Moppett
Reverend Nile
Mr Oldfield
Mr Pearce
Dr Pezzutti
Mr Ryan
Ms Saffin

Mr Samios
Mrs Sham-Ho
Mr Tsang
Mr West

Tellers,
Mr Jobling
Mr Primrose

Noes, 6

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

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

LONG-TERM STRATEGIC RAIL PLAN**Report**

The Clerk tabled, according to the resolution of the House of Wednesday 8 May 2002, the report entitled "Long-term Strategic Plan for Rail", received from the Director General of the Premier's Department.

ADMISSION OF THE TREASURER INTO THE LEGISLATIVE ASSEMBLY

The President reported the receipt of the following message from the Legislative Assembly:

Madam PRESIDENT

The Legislative Assembly requests the concurrence of the Legislative Council for the Honourable M. R. Egan, MLC, Treasurer, Minister for State Development, and Vice-President of the Executive Council to attend at the Table of the Legislative Assembly on Tuesday 4 June 2002 for the purpose only of giving a speech in relation to the New South Wales Budget 2002-2003.

Legislative Assembly
9 May 2002

JOHN MURRAY
Speaker

Motion by the Hon. Ian Macdonald agreed to:

That standing and sessional orders be suspended to allow consideration of the Legislative Assembly's message forthwith.

Motion by the Hon. Ian Macdonald agreed to:

That this House agrees to the request of the Legislative Assembly in its message dated 9 May 2002 for the Hon. M. R. Egan, MLC, Treasurer, Minister for State Development, and Vice-President of the Executive Council, to attend at the Table of the Legislative Assembly on Tuesday 4 June 2002 for the purpose only of giving a speech in relation to the New South Wales Budget 2002-2003.

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

SPECIAL ADJOURNMENT

Motion by the Hon. Ian Macdonald agreed to:

That this House at its rising today do adjourn until Tuesday 4 June 2002 at 2.30 p.m.

GAMING MACHINES AMENDMENT BILL

In Committee

Clauses 1 to 4 agreed to.

Schedule 1

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.50 p.m.]: I move Government amendment No. 1:

Page 3, schedule 1. Insert after line 29:

[5] Section 19 Transfer of poker machine entitlements

Insert after section 19 (5):

- (6) However, a person is not, for the purposes of subsection (3) (c), to be considered as having a financial interest in a hotelier's licence by reason only of the person being the owner of the hotel.

This amendment will provide for the transfer of poker machine entitlements between clubs and hotels. In the case of hotels it is a requirement that an application to transfer entitlements must demonstrate to the satisfaction of the Liquor Administration Board that the proposed transfer is supported by each person who, in the opinion of the board, has a financial interest in the hotelier's licence. In some cases the board's records can identify up to four different parties who are determined as having an interest in a particular hotel licence. These include the licensee, the licence owner, the business owner and the premises owner.

The board has formed the view that all applications to transfer a licence from one hotel to another will have to be supported by each of those parties. However, it was never intended that the owner of a hotel building should be permitted to block the sale of entitlements. The amendment will make it clear that a person whose only interest in a hotel is to own the building is not a person with a financial interest in the hotelier's licence and, accordingly, is not required to support a proposed transfer of entitlements before it can be approved by the board.

The Hon. JOHN JOBLING [9.51 p.m.]: The Opposition has considered the Government's amendment and is convinced by the argument put forward by the Hon. Ian Macdonald. The Opposition and the shadow Minister have considered these matters in great detail and, on this occasion, we support the Government's amendment.

Amendment agreed to.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: [9.51 p.m.]: I move Australian Democrats amendment No. 1:

No. 1 Page 10, schedule 1. Insert after line 3:

[32] Section 45 Regulation of promotional prizes and player reward schemes

Insert after section 45 (5):

- (5A) A hotelier or registered club is not authorised to charge a fee:
- (a) for a person to participate in any such player reward scheme, or
 - (b) for providing a player activity statement to any person.

I indicate to the Committee that I will not move two amendments that relate to giving advice to lessees in mediation. The amendments refer to the asset gains to lessees versus lessors. About one-third, or 100, of the 300 people have gone through the transfer process. Seventy per cent are happy with mediation and 30 per cent are not, which is usually due to greed on one side or the other. This issue may need to be addressed in future, but at present I have been advised that most of the mediation is working. On that basis I do not intend to move those amendments. My amendment No. 1 will amend section 45 of the Act, which deals with general harm minimisation measures. This will make clear the intention of the Parliament that harm minimisation is the prime objective of the player reward scheme. Section 45 (4) states:

If a hotelier or registered club conducts a player reward scheme, the hotelier or club must, in accordance with the regulations:

- (a) advise the participants in the scheme of the availability of player activity statements that relate to the playing of approved gaming machines under the scheme, and
- (b) provide each such participant with a player activity statement.

The draft regulations, which are not tabled in Parliament, contain, among other things, excellent measures to contain the minimum data that must be in a player activity statement. The regulations state:

- (a) The total amount of turnover by the participant during the month for the period covered by that statement.
- (b) the total wins recorded during the monthly period;
- (c) the net expenditure, that is, turnover less wins during the monthly period;
- (d) the total points earned and redeemed during the monthly period as a result of playing gaming machines under the scheme;
- (e) the total length of time over each 24-hour period during the monthly period when the participant's player card is inserted in gaming machines under the scheme; and
- (f) the total length of time that the participant's player card is inserted in gaming machines under the scheme during the monthly period.

The regulations also say:

Player activity statements must be provided free of charge by the hotelier or registered club. However, if a participant requests a subsequent player activity statement to be provided in respect of a monthly period the hotelier or club may charge for providing the subsequent statement in accordance with the scale of charges approved by the board.

Clearly, making people pay to get statements of their losses is not in the interests of harm minimisation. The Australian Democrats would prefer the provision of player activity statements to be an opt-out scheme rather than an opt-in scheme. In any event, the amendment does not seek to cut across the regulations except to make it clear that there can be no charge on the player to receive player activity statements, and nor can there be any recovery of the costs, including the provision of player activity statements via a fee to participate in a reward scheme. We are keen to ensure that reward schemes do not encourage people to play these machines. We believe they should be for harm minimisation purposes. This amendment will strengthen that intention. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.55 p.m.]: The Government does not support the amendment. Player reward schemes are currently conducted as a marketing strategy by clubs and hotels. It should be left to those venues to determine whether to set a fee. If a fee is charged to participate in a player loyalty scheme it is up to the players to choose whether they want to pay the fee and participate in the scheme. This is no different from other loyalty schemes such as frequent flyer or fly buy schemes, some of which charge fees and some do not.

There are no obvious harm minimisation measures in the proposal to prohibit the payment of fees to enter into player reward schemes. In relation to the proposal to prohibit fees being charged for providing a player activity statement, the Gaming Machines Regulation 2002 currently provides in clause 42 (8) that player activity statements must be provided free of charge by the hotelier or registered club. However, if a participant requests a subsequent player activity statement to be provided in respect of a monthly period, the hotelier or club may charge for providing the subsequent statement in accordance with the scale of charges approved by the board.

The Hon. JOHN JOBLING [9.57 p.m.]: The Opposition has considered this amendment and is convinced by the argument put forward by the Government. Clearly, in this case, we cannot support the amendment moved by the Australian Democrats as hoteliers are not authorised to charge a fee, as is suggested.

This is a matter for individuals. In this case the shadow Minister has undertaken broad-ranging and detailed consultation with the Australian Hotels Association, New South Wales division, which supports the views that have been expressed. Despite the guffaws coming from an honourable member on the crossbenches, if he had thought about this matter he would have concluded that the argument put forward by the Hon. Ian Macdonald on behalf of the Government is correct. As I said earlier, the Government's argument is persuasive. The Opposition supports the views expressed by the Government.

Amendment negatived.

The Hon. PETER BREEN [9.58 p.m.]: I move the Reform the Legal System amendment:

Page 10, schedule 1. Insert after line 3:

[32] Section 45A

Insert after section 45:

45A Prohibition on keeping gaming machines that take \$50 or \$100 notes

A hotelier or registered club must not keep an approved gaming machine that is capable of accepting cash in the form of a \$50 or a \$100 note.

Maximum penalty: 100 penalty units.

This amendment provides that a hotelier or registered club must not keep an approved gaming machine that is capable of accepting cash in the form of a \$50 or \$100 note. This proposed amendment to the Gaming Machines Amendment Bill would prohibit the use of \$50 and \$100 notes in gaming machines. Similar measures were recently implemented in Queensland, Victoria and South Australia and it is time that New South Wales, one of the biggest problem gambling jurisdictions in the world, did the same. I remind honourable members about the massive and growing amount of gambling in the State, particularly on gaming machines.

Gaming machines in clubs and hotels are responsible for by far the largest sector, an extraordinary 70 per cent, of total New South Wales gambling revenue. Racing, casino gaming and lottery products all combined are responsible for just 30 per cent of total gambling revenue. So there is no doubt that public policy choices on the regulation of gaming machines is extremely important. The use of gaming machines is now at an all time high, and that is why other Australian States have now moved on harm minimisation measures for gaming machines in relation to the denominations accepted by the machines. That is why New South Wales must follow suit.

This lack of will by the Government to do so was evidenced recently when Minister Face abandoned a recent recommendation of the Liquor Administration Board to slow the rate at which wheels spin on poker machines, to ban \$50 and \$100 notes and to restrict bets to \$1. Minister Face said that lack of evidence that this would help problem gambling was the reason he did not agree with those recommendations. On 1 December last year Queensland banned \$50 and \$100 notes in clubs, hotels and casinos. In Queensland the maximum note accepted is \$20. Some reductions in total gaming machine turnover was noted in December and January. I am reliably informed that the overall impact on gambling revenue in Queensland is to reduce the amount of revenue and gambling by 10 per cent.

In Queensland, the cost to change the note acceptors to \$20 was minimal, because this was done remotely through a centralised monitoring network. In New South Wales, where there are about 100,000 machines, the acceptors would need to be changed manually. I understand that is a relatively easy task because note acceptors are built in such a way as to create flexibility in the machines and are easily replaced. The cost of replacement would be minimal. South Australia has taken a legislative approach. Two months ago in Victoria, the Minister for Gaming and Racing announced extensive new gaming machine regulations, including the banning of \$100 notes. These are logical developments in other parts of Australia, ones that New South Wales ought to be following. I urge all honourable members to take this opportunity to support the amendment.

The Hon. IAN COHEN [10.02 p.m.]: The Greens support this amendment, which specifies that a pub or club must not keep a gaming machine that is capable of accepting cash in the form of \$50 and \$100 notes. It has long been recognised by problem gambling experts that the greater amounts of money a problem gambler is able to put through the pokies in the shortest time the more at risk the gambler is of losing money. In other words, it is best that poker machines take the smallest denomination of money. The Greens would prefer that to be 5¢ coins. We do not expect that the Government would accept that but, hopefully, in the spirit of appreciating

that the larger cash denominations are clearly a significant problem for some gamblers, the Government would appreciate that problem gamblers would benefit by keeping the acceptable note denominations smaller than \$50 and \$100. Those notes should be banned, and the Greens support any move that is taken in that direction. The amendment moved by the Hon. Peter Breen is commendable.

Reverend the Hon. FRED NILE [10.03 p.m.]: The Christian Democratic Party supports the amendment to prevent \$50 and \$100 notes from being accepted by gaming machines. As honourable members know, the Christian Democratic Party is completely opposed to poker machines. We would rather not have them at all, especially after a vote by both sides of this House allowed poker machines to go into hotels. That proposal was opposed by the crossbench. I would prefer that a limit of \$1 be accepted by the machines. Previously I have indicated that staff of some of the major clubs told me that they were directed not to change \$2 coins into two \$1 coins so that patrons would be forced to use \$2 coins. Gamblers are being manipulated to spend the maximum amount of money on the machines—often money they cannot afford or, worse still, money they take from the companies for whom they work. The number of embezzlements by previously honest people with good reputations is increasing. When they become problem gamblers they take money from their employers and finish up in prison. The Christian Democratic Party supports the amendment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.05 p.m.]: The Democrats support this amendment. The legislation has not addressed the amount that individual machines can take from a person per hour. Everyone knows that one puts money in and, on the probabilities, loses that money. The machines can be set to accept a certain amount of money per hour. They convert whatever denomination is being used into credits, and the gamblers become excited about the number of credits that appear on the screen. The money becomes incorporated into the game and is not related to a dollar figure or the amount of money the gambler is losing.

The bigger the denomination, the greater the chance the organisation has of taking large amounts of money per hour from the players. It worries me that the Government has said that it has consulted with the Australian Hotels Association, because it is the representative of the employers and generally of the owners or lessees of the machines. The association does not represent the landlords, but it runs the system. The Government has asked the people who make the money for advice. That is like asking the tobacco industry for advice on smoking; it is an absurd proposition that the Government, which is concerned about the welfare of the people rather than the welfare of a lobby group, takes advice from the lobby group.

The Government has not taken account of the amount of money taken from punters per hour by the machines. Clearly, \$50 and \$100 notes taken from automatic teller machines and put into the poker machines are transmitted to credits on the screen, so there is no feedback to show how much money has been lost. People can lose a lot of money each hour. If the Government has any serious commitment to harm minimisation it and the Opposition should support this amendment.

The Hon. IAN MACDONALD (Parliamentary Secretary) [10.06 p.m.]: The Government opposes the amendment moved by the Reform the Legal System party. This proposal, along with many other harm minimisation strategies, has been under consideration by the Liquor Administration Board. In response to the board's consideration of this and other strategies, gaming machine bodies commissioned research that was carried out last year by the University of Sydney. In relation to the proposal to limit bill acceptors on gaming machines to a maximum of \$20, the research reached the following conclusions. First, there was little evidence that the proposed modification to bill acceptors would impact either positively or negatively on the levels of enjoyment or satisfaction of patrons in either hotels or clubs.

Second, although more problem gamblers were observed to use the larger denomination bill acceptors, the use of bill acceptors did not appear to be reliably associated with problem gambling status, severity of problem gambling, amount of money lost or persistence of play. Third, anecdotal data obtained from pathological gamblers participating in focus groups suggested that this proposed modification would be unlikely to lead to an alteration in patterns of play. Fourth, the study found no evidence to support the contention that this modification would effectively reduce gambling behaviour amongst problem gamblers. Therefore, it is considered that this modification would be of limited effectiveness in minimising harm associated with electronic gaming machines but would lead to an overall reduction in revenue to the gaming venues.

Because of the complexity of the research methodology and its findings, the Liquor Administration Board has recommended that further research be carried out before accepting the research findings at face value. The Government has agreed to commission further research in this matter and the other two strategies that were

the subject of the industry-commissioned research. Until such time as further research has been undertaken it would be premature to remove \$50 and \$100 notes as a harm minimisation strategy. The only research that has been carried out to date indicates that the strategy would, at best, be ineffective. The Government opposes the amendment.

The Hon. JOHN JOBLING [10.08 p.m.]: The Opposition understands the views and arguments that have been put forward by the Hon. Peter Breen and acknowledges the quotes he cited from Queensland in relation to \$50 and \$100 bills. The shadow Minister in the other place has considered this in some great detail and, frankly, has come to the conclusion that at this stage he does not believe that the Opposition should support this amendment.

The question to be asked is: What does the research say, what does it mean, and what does it prove? Despite the unfortunate cacklings of the Hon. Dr Arthur Chesterfield-Evans, one needs to look at a series of matters before coming to a conclusion on the matter. To my knowledge, at least two research reports have been prepared on three proposed modifications of the approved design and parameters for gambling machines in New South Wales.

One of those reports was prepared by the researchers at the University of Sydney's gambling research unit, which would seem to be a reasonably impartial body with no vested interest in the matter, as was unkindly suggested by an honourable member who spoke earlier in this debate. I understand that the researchers provided an assessment of the impact of the three modifications as a harm minimisation strategy for dealing with persons who have gambling problems. That is fair enough. The other report, prepared by the Centre for International Economics, examined the likely revenue impact of the three modifications. Again, that is an interesting report and its findings should be noted.

The Opposition understands that each of the proposals was canvassed in a discussion paper released for public comment in November 2000 by the Liquor Administration Board, the body responsible for approving the operating parameters of gaming machines. I am sure the Hon. Dr Arthur Chesterfield-Evans has read that report, digested it and understands what it says. The release of the discussion paper clearly aroused a great deal of significant industry and community comment and concern. The board invited submissions and clearly considered them. As honourable members would be aware, in April 2001 the board announced that it would refrain from making a decision on the three proposals in order to enable the measures to be trialled as part of a research project.

The research project was undertaken by the University of Sydney's gambling research unit. I am sure the Hon. Dr Arthur Chesterfield-Evans would agree that that is a reasonably responsible body with no ties to any specific unit. The research was commissioned and funded by a body known as the Gaming Industry Operators Group, which, I accept, comprises the major participants in the New South Wales gaming industry. I will return to that aspect in a moment. The university's report on that research was handed to the board in November 2001. I understand that a separate report by the Centre for International Economics was delivered to the board at about the same time.

The reports are comprehensive and need to be carefully examined and properly considered. In order for the Liquor Administration Board to make an assessment, the board requested and recently received a submission on the reports from the Gaming Industry Operators Group. I can hear the cynicism coming. However, the board has indicated, in anticipation of that view, that it will not act on the reports until they are independently assessed. Questions have been raised by some commentators, and some people have asked whether the reports are based on fact. Indeed, it has been suggested that it may well be argued that the studies were funded by the gaming industry. That is a fair comment. I understand that the Government noted this, and therefore announced in July 2001 that it was prepared to allocate funding of \$3 million, to be partly funded through the Casino Community Benefit Fund.

As I understand it, the Government proposes to engage an internationally renowned gaming research facility. I understand that amongst those to be considered are the Institute for Research on Pathological Gambling and Related Disorders, which is part of the Division of Addiction at Harvard Medical School in the United States of America—which would seem to be a fairly independent body—and the Gambling Studies Institute at the Auckland University School of Medicine. The shadow Minister has held extensive discussions and consultations with members of the industry and members of the Australian Hotels Association, and has also held discussions with the lessees of hotels in country areas. Those people are in support of the amendments as an improvement on the current conditions included in the Gaming Machines Act 2001. The shadow Minister has done the job thoroughly, and he has come to the conclusion—

The Hon. Peter Breen: George Souris?

The Hon. JOHN JOBLING: Yes, it is the Hon. George Souris.

The Hon. Peter Breen: We didn't know who it was.

The Hon. JOHN JOBLING: I apologise for your ignorance. However, I make it quite clear that the shadow Minister for Gaming and Racing is the Hon. George Souris, a meticulous man, who will carefully examine this before he takes a position on behalf of the Opposition. We have looked at the matter in the party room and discussed it. At this stage, regrettably, the Opposition cannot support the amendment moved by the Hon. Peter Breen.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.17 p.m.]: The groups cited by the Opposition and the research from the mouth that roars include the Centre for International Economics, which presumably takes the view of most economists that a dollar is a dollar, no matter who has it, and that the sooner it is transferred, the better; the Centre for Gambling Research at the University of New South Wales, which is industry funded; and the Industries Commission, which is normally hard-baked. When the Industries Commission looked at gambling it suddenly discovered that the pleasure that one derived from it suddenly had a value, so one wonders about its conclusions. In my view, the assumption that the Liquor Administration Board has harm minimisation as its primary objective cannot be taken for granted.

The bodies that have been cited have interests other than harm minimisation for punters at heart. In my view, members of Parliament ought to have harm minimisation at heart for the population in New South Wales, because they are our constituency and they are the people to whom we owe loyalty. I suggest that the question is being asked the wrong way round. Why should someone have to prove that if you put more money into a machine you do not lose more money? It would seem that a proposition as obvious as that would have to be disproved. The proposition is that if you put money into a machine, you will lose more money. That would seem to me to be so self-evident that people ought to be able to reverse the proposition and say that if you put more money into a machine, you are not doing more harm, and they will prove that putting more money into a machine makes you lose less money. If the proposition is so unlikely, the onus should be on these groups to prove it.

I am sure they are willing to spend \$3 million or whatever. The tobacco industry was willing to spend a fortune on research when it already knew the answer. The main purpose of spending the money was to delay the implementation of the conclusion that was obvious to blind Freddy 20 years earlier. I am sceptical that Harvard University, or even God himself, is doing the research. The point is that this is basically paying for a delay. I am sure that the Opposition and the Government will support this reasonable and obvious amendment.

The Hon. JOHN JOBLING [10.19 p.m.]: I did not propose to enter into the debate further, but in view of the comments of the honourable member it is reasonable to remind him that there are now signs in gambling parlours and hotel rooms where there are poker machines, as there are in Star City Casino, that advise that the chances of winning a major jackpot are greater than one in one million. How far does one go and at what point does one say that someone will not invest money, whether it is on horses, poker machines or two flies walking up a window pane? I remind the honourable member that the Government has considered this question. My defence of the Government is rather strange because I am sure it can look after itself, but that does not mean the Labor Party will be in power after March next year. How much more skilled and independent an organisation could one want to conduct research than the Institute for Research on Pathological Gambling and Related Disorders within the Division of Addiction at Harvard Medical School? If that is not enough, add the Gambling Studies Institute at the Auckland University School of Medicine. We cannot support the amendment.

Reverend the Hon. FRED NILE [10.22 p.m.]: The Government has referred to the Harvard Medical School and its research into pathological gambling. The Opposition has made a big fuss about that. The Government stated that the research showed that such a provision would have no effect on a focus group of pathological gamblers. But we are not talking about pathological gamblers. A trick is being played on us. The inquiry into the gambling problem showed that there were 300,000 problem gamblers, not pathological gamblers. Pathological gamblers are another small percentage.

The Hon. John Jobling: That is the name of the group at the university in America.

Reverend the Hon. FRED NILE: Yes, but the Government's focus group was pathological gamblers, and research found that such a provision would not affect them. That may be so. Pathological gamblers are

almost mentally unbalanced. We are speaking about problem gamblers and gamblers who are not yet problem gamblers. If you were to focus all your research on the pathological group then you would have no restrictions on gambling because nothing affects the pathological gambler.

Amendment negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.20 p.m.]: I move Democrats amendment No. 2:

No. 2 Page 10, schedule 1. Insert before line 4:

[32] Section 45A

Insert after section 45:

45A Gaming machines must be located in non-smoking areas only

- (1) A hotelier or registered club must not keep an approved gaming machine that is available to be operated unless the gaming machine is located in a non-smoking area of the hotel or club. Maximum penalty: 100 penalty units.
- (2) A person must not smoke in a non-smoking area of a hotel or registered club in which approved gaming machines are located. Maximum penalty: 5 penalty units.
- (3) In this section:
non-smoking area of a hotel or registered club means a part of the hotel or club that is, by the use of signs, designated by the hotelier or club as an area in which smoking is not permitted.

The amendment will confine gaming machines to non-smoking areas. Other jurisdictions, principally Victoria, are considering bans on smoking or requiring gaming rooms to be smoke free. Section 68 of the Act provides that if a hotel has more than 10 machines the hotelier must ensure that no more than five approved gaming machines are located in the general bar of the hotel, and all the others—or all of them if none are located in the general bar area—are located in another area, a gaming room, that conforms to the requirements of the regulations. Section 9 of the regulations sets out the requirements for gaming rooms in hotels only—there is no reference to smoking—and section 10 provides the general requirements.

There is a connection between an addiction to smoking and an addiction to gambling. These are the people most at risk. As hoteliers are happy to tell you, the percentage of hard gamblers who smoke is high. They are concerned that if people in non-smoking gaming areas have to stop smoking, they will move outside to get some fresh air and thus break the continuity of the fixation with the machine and their revenue will drop. In other words, it is harm minimisation in terms of gambling. Hotels and registered clubs are exempt from the Smoke-free Environment Act 2000. The relevant section, 11 (1) (d), refers to any part of the premises of the casino within the meaning of the Casino Control Act that is used solely for the purpose of gaming machines within the meaning of section 8 (5) of that Act, or solely for the purpose of a bar, whether or not such gaming machines are situated in the bar area.

Effectively, gaming machine areas are exempt from the Smoke-free Environment Act. That has a particularly bad effect on gamblers because many of them damage their health by smoking. If addicted smokers were not allowed to smoke, as their blood nicotine levels fell and as the nicotine was metabolised they would have to have another cigarette. If they are addicted to tobacco the effect of this amendment will pressure them to get away from the machines. As the two addictions go together, this amendment is likely to be helpful for the gambling problem of the addicted smoker or the smoking problem of the addicted gambler. Whichever way we look at it, we will gain two harm minimisation initiatives in one. We could help these people a great deal both financially and in relation to their health. This amendment is ideal. I am sure that both the Government and the Opposition will leap at this chance to do two good deeds in one. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [10.27 p.m.]: The Government, not surprisingly, opposes the amendment. Honourable members already know that the Government introduced laws in 2000 to restrict or prohibit smoking in closed public areas. As a result, smoking is now outlawed in many licensed venues, while in hotels and clubs it is currently restricted to certain areas where patrons are not consuming food. It is important to note that generally those laws have received strong community support. If smoking restrictions are to be effective and compliance by members of the public is to be encouraged, it is important that measures have community support. It is also important that we involve stakeholders, particularly venue operators, who have a major role in enforcing the law in this process.

The changes made in 2000 have been welcomed by many in the community. However, those changes are not the end of the story. The Government has a process in place to deal with the remaining smoking-related issues in hotels and clubs. A Government working party involving a number of government agencies and the hotel and club sectors has been established to consider how smoking can be minimised or eliminated in those few remaining areas in which it continues to be permitted. Obviously, that includes gaming areas. That process was established by the Government in good faith, and it should be allowed to continue. The hotel and club industries, which include many small business operators, are moving forward on the basis of further consultation and input on this important issue.

To introduce the types of controls on smoking proposed by this amendment at this time and through this legislation, which I remind honourable members is not about smoking but gaming, would certainly undermine that process. Unlike the Government's approach, this amendment is not about inclusion. Rather, it is about exclusion and the Government cannot support it. The Government also has concerns that the amendment may not be consistent with the existing controls in the Smoke-free Environment Act. That will create problems for venues and the public because different language is used and different controls potentially apply within the same premises. That leads to uncertainty, confusion and a lack of compliance, and that is the opposite of what the Government and the community want. The Government opposes the amendment.

Reverend the Hon. FRED NILE [10.29 p.m.]: Obviously the Christian Democratic Party supports this amendment. We originally introduced the Smoking Regulation Bill, which was passed by this House and which had the objective of prohibiting smoking in all public places. As the Hon. Ian Macdonald has said, the Government then exempted certain areas. I do not believe that exemptions should apply. The non-smoking policy has been warmly received by the people of New South Wales, far more than anyone would have expected, without protest and without people smoking in places where they are not supposed to smoke. If this provision had been moved at the same time, it would have been accepted.

I warn the Government that in view of some of these recent court cases involving the effects of smoking on both smokers and passive smokers, Slater and Gordon and other firms are now examining how to sue governments because of their policies. They have even raised the issue of cigarettes provided by the Government to the Australian Army during World War II. I warn the Government that there may be other opportunities for class actions against the Government for not taking action to prohibit smoking, as is proposed by this amendment.

Amendment negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.31 p.m.]: I move Democrats amendment No. 3:

No. 3 Page 10, schedule 1. Insert after line 10:

[35] Section 47 Responsible conduct in relation to gaming machines

Insert after section 47 (2) (h):

- (i) requiring the display of player-related gambling information on approved gaming machines kept by hoteliers and registered clubs.

This amendment is similar to an amendment moved by the Christian Democratic Party last time this bill was debated. That amendment was defeated and the Government argued that we should wait for the regulations. We waited for the regulations and did not find anything like this gold standard in the regulations. This amendment serves only to make it clear that the desire of Parliament is that gaming machines kept by hoteliers and registered clubs should include technology to provide for the display of gambling information on the screen. There is no obligation on the Minister to make such a regulation. That is covered by my next amendment. The Liquor Administration Board has made a determination with regard to the type of player-related gambling information that should be displayed on the machines. This information is available on the board's web page on the Department of Gaming and Racing's web site. It is the first determination of the Liquor Administration Board on gambling harm minimisation and the responsible conduct of gambling activities. The executive summary states:

Changes to the Technical Standards

The Technical Standards will be amended to incorporate the following:

- Information to be designated "player information display" ("PID")
- That suitably presented plain-English information about specific player returns and the likelihood of payouts on individual gaming machines games be incorporated on a second screen of gaming machines.

- That the information to be displayed include:
 - total theoretical percentage return to player for the game, including any progressive features in stand-alone progressive games;
 - dollar value of top 5 single prizes;
 - the probability of winning the top 5 single prizes;
 - the probability of winning the lowest 5 single prizes;
- That there be a separate dual function PID button or screen icon in machine design.
- That there be a "pull-through" message advising of the availability of the second screen information.
- That the PID is only accessible in idle mode.
- That the PID should be available until a relevant button or touch screen icon is pressed again to return to idle mode.
- The cash input limit for gaming machines be reduced from \$10,000 to \$200.
- The maximum amount that may be transferred via a CCCE protocol to a gaming machine be reduced from \$10,000 to \$200.
- The credit meter of gaming machines must display alternating credits and currency value when the machine is in idle mode and this alternating display must remain on the credit meter until the credit meter is cleared.
- That whenever a machine is connected to a link system there be available a "pull-through" message which states that currency value displayed on the machine does not include the value of any win on the applicable link.
- That machines be required to generate and display:
 - A "pull-through" harm minimisation message that runs across the screen at least once during every 30 minutes of continuous play. "Continuous play" shall mean play without a break of 5 minutes or more.
 - A "pull-through" harm minimisation message that runs across the screen of each machine when the \$200 cash input limit is reached.
 - That whenever a player has a win of \$100 or more that there be an enforced break from play created by the prevention of the machine being played and the display of a message on the screen inviting the player to cash out by taking the action of pressing a button or using a touch screen.
 - That in addition to such other harm minimisation messages that the Board may require the message contain the following information generated by the gaming machine and relating to the current gaming session which involved a period of continuous play without a break of 5 or more minutes:
 1. Amount played
 2. Amount won with a message that money won may not include money won on a link
 3. Money spent (played less won) with a message that money won may not include money won on a link
 4. Current time
 5. Time spent playing
 6. Amount spent per hour (eg. dollars per hour) with a message that money won may not include money won on a link

That this session information shall be reset to zero as soon as the credit meter is cleared.
- That the above information be available through a PID message.

Basically, that means that the machine has to tell people that they have done their dough. This is the determination of the Liquor Administration Board and we believe it should be implemented forthwith. It has been six months since we last debated this issue. At that time the Hon. Duncan Gay said:

I listened to the dissertation of the Hon. Dr Arthur Chesterfield-Evans on this matter during the second reading debate. I was persuaded by the argument that he put forward.

After interjections he continued:

Another important point that he—

that is, the Hon. Ian Macdonald—

made was that the proposal involves one form of technology and there are probably other forms available that the Government is evaluating. I might have heard incorrectly but the impression I gained was that the Government had an obligation to evaluate the situation and to move in that direction. The Parliamentary Secretary, in his ministerial capacity, may reinforce what I said or say I am incorrect, but that was my understanding. Given that understanding, I agree with our leader that we should oppose the amendment.

In reply, the Hon. Ian Macdonald said:

The Government has a lot of sympathy with what Reverend the Hon. Fred Nile is trying to do: find new techniques to add to the harm minimisation strategies in relation to gambling machines.

After six months we have seen no movement on this important issue. The company that developed a printed circuit board that can be inserted into any—I repeat "any"—poker machine and deliver the player information display [PID] in accordance with the Liquor Administration Board's determination has had little success progressing the use of its technology with the Government. The Australian Democrats, as we said last time, have no financial interest in this company. However, we have seen that it can deliver something that will, according to the Liquor Administration Board, be an important harm minimisation measure.

This amendment is informative as to the subject matter of regulations. It should be supported by every honourable member. Our other amendment seeks to require regulations to be made within a specific time frame. It should also be supported. The concept behind this amendment was supported by the Hon. Duncan Gay last time, and he did not support it only on the basis that the Government was looking at it. The Government gave an undertaking that it was looking at this technology to minimise harm. Six months later the Government has done nothing. Will the Government get out of this and not support the amendment or will it happily support the amendment that it has been thinking about for six months and inadvertently forgot to bring forward tonight?

Reverend the Hon. FRED NILE [10.38 p.m.]: Obviously the Christian Democratic Party supports the amendment moved by the Hon. Dr Arthur Chesterfield-Evans. It would be a good solution for the Government to support the amendment, and the procedure to implement the special devices that are needed can then follow. This amendment would give the Government the power to do that, even though there may be some resistance by the hotels and clubs. It will cause some temporary interruption, but the Government could say that the House has passed this amendment so it has to implement it. We are helping the Government to do its job.

The Hon. IAN MACDONALD (Parliamentary Secretary) [10.39 p.m.]: The Government opposes Australian Democrats amendment No. 3. The amendment would provide a regulation-making power to allow regulations to be made that require the display of play-related gambling information on gaming machines in clubs and hotels. The amendment is unnecessary because there is already sufficient regulation making powers in section 210 (2) (p) of the Gaming Machines Act. Section 210 (2) (p) allows regulations to be made in relation to "information to be provided on or in relation to approved gaming machines and the display of signs on or in relation to approved gaming machines". As the Hon. Dr Arthur Chesterfield-Evans said, a similar amendment was moved and was defeated when the House debated the Gaming Machines Bill last year. As was noted during that debate, the Liquor Administration Board had been reviewing a proposal to require certain information to be displayed on gaming machines. The board has already determined that it will require player information messages to be displayed on gaming machines in future. I am advised that the board has now turned its attention to the wording of those messages.

Amendment negatived.

The Hon. IAN COHEN [10.40 p.m.]: I move Greens amendment No. 1:

Page 10, schedule 1. Insert after line 10:

[35] Section 47A

Insert after section 47:

47A Prohibition on accepting transfer of prize winning cheques

- (1) A person (other than a financial institution) must not accept the transfer of a cheque that the person knows, or could reasonably be expected to know, is a prize winning cheque.

Maximum penalty: 100 penalty units.

- (2) Without limiting subsection (1), a person who accepts the transfer of a prize winning cheque in, or within 500 metres of, a hotel or registered club is taken to know that the cheque is a prize winning cheque unless the contrary is proven.

- (3) In this section:

prize winning cheque means a crossed cheque (as referred to in section 53 of the *Cheques Act 1986* of the Commonwealth) that is paid by a hotelier or registered club as prize money to a person as a result of the person winning money or accumulating credits on an approved gaming machine.

This amendment was brought to the Greens attention by an article in the *Sydney Morning Herald* of 22 April by Geesche Jacobsen. It was reported that loan sharks are cashing cheques for poker machine winnings almost instantly. Cheque shops or payday lenders cash crossed cheques for a fee of up to 10 per cent of the cheque value. Some individuals charge up to 25 per cent commission. These payday lenders and individuals operate close to clubs and pubs. For example, the *Sydney Morning Herald* journalist found payday lenders close to clubs in Blacktown, Liverpool, Burwood, Bankstown, Hurstville and Fairfield. According to the *Sydney Morning Herald* article, one club official estimated that half of the clubs' winners cheques were cashed at a nearby shop, which set up business shortly after the harm minimisation legislation was introduced 18 months ago.

This amendment seeks to ensure that all prize winning cheques have to be banked through the winner's financial institution. The cheques cannot be banked through a third person's account. This will ensure that the cheques are banked and not cashed by loan sharks. Clearance generally takes three working days, which will give the person a three-day cooling off period between the person first obtaining the cheque and using the money. In the event that the money is needed urgently, for example, to pay bills or rent or to buy food, a person can for a small fee—I believe the Commonwealth Bank charges \$15—to have the clearance process fast-tracked. This is much better than losing up to 20 per cent of the prize-winning money to loan sharks. I commend Green's amendment No 1.

Reverend the Hon. FRED NILE [10.42 p.m.]: The Christian Democratic Party supports this very good amendment.

The Hon. IAN MACDONALD (Parliamentary Secretary) [10.42 p.m.]: The amendment is in response to an article that appeared in the *Sydney Morning Herald* on Monday 22 April entitled "Pokies law easy meat for loan sharks". The article claimed that cheque cashing shops located close to hotels and clubs were cashing prize cheques in return for large fees. I point out that the cashing of cheques does not constitute a loan. Therefore, care should be taken in labelling these businesses as loan sharks or even payday lenders. The Minister for Fair Trading has already moved to amend the consumer credit laws to halt the alarming growth in unscrupulous practices by payday lenders and has brought these credit providers into line with the extensive operational requirements applied to other providers of consumer credit. The amendment that has been moved by the Greens is consistent with the Government's policy of protecting consumers from the more extreme examples of predatory behaviour that sometimes springs up in and around gambling venues. The Government supports the amendment.

The Hon. JOHN JOBLING [10.43 p.m.]: The Opposition supports this amendment. The Opposition has considered the amendment carefully. As I understand it, if a person wins an amount of money on a gaming machine in excess of \$1,000 the club or hotel must pay the amount by crossed cheque to the prize winner. In other words, if a person wins \$10,000 the club or hotel is required to pay at least \$9,000 to the person by crossed cheque. I commend the variation from the original amendment from "or in the vicinity of" to read "or within 500 metres". The Opposition agrees with the need for the amendment in a number of areas. The amendment seeks to stop the so-called payday lenders—sometimes called loan sharks—from cashing cheques paid from poker machine winnings.

People and/or organisations who cash the cheques are obviously going to receive a substantial financial gain. In this case, if the winner is a problem gambler, he or she would have the option of using the winnings to further gamble. The Opposition believes that persons or organisations who are willing to cash prize-winning cheques may also indirectly offer gamblers cash on credit in the future. We do not want such a situation to occur. We believe that gamblers would have a reduced exposure to this option if they transferred their prize-winning cheques to a financial institution.

Section 54 of the Commonwealth Cheques Act 1986 restricts the transfer of crossed cheques to other than financial institutions. As I recall, section 54 states that the crossing of a cheque is a direction to the drawee institution not to pay the cheque otherwise than to another financial institution. The argument has been put, and I do not sustain it, that a cheque in this case may not be easily identifiable as originating from a club or a hotel. In other words, it may be paid on a company name cheque and, therefore, no obvious record of the hotel or club name is listed thereon. I do not support that argument, but I support the thoughts and the views put forward by the Greens about this amendment. The Opposition is pleased to support the amendment.

Amendment agreed to.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.46 p.m.]: I do not move Australian Democrats amendment No. 4 because it was contingent on amendment No. 3 being agreed to. I move Australian Democrats amendment No. 5:

No. 5 Page 11, schedule 1. Insert after line 17:

[40] Section 209 Relationship with Environmental Planning and Assessment Act 1979

Omit the section.

There is a real problem with the blanket ban on local government powers being used to manage gambling on premises within their proper jurisdiction. While the Australian Democrats are aware of the social impact assessment [SIA] process that provides for local government input, there is no assurance that that input will be given appropriate hearing and, unfortunately, there is no appeal from the Liquor Administration Board and Licensing Court process. The Australian Democrats believe that local government planning powers should be used to complement the SIA process and to put some power in the hands of the community that is directly affected. The SIA process does not require hotels or clubs to undertake an SIA for existing machines. Surely this area could be addressed by local government working in conjunction with the Liquor Administration Board on planning instruments. If this section is omitted, we are committed to working with the Government to put in place a framework that integrates social impact statements and planning powers to manage harm minimisation on a community basis.

The Australian Democrats believe that local governments should have the ability to consider the social impact. We believe that the social impact depends on the machines' take per hour. A better analysis of the social impact cannot be made until it is known how much money the latest machine is able to take per hour. Poker machines can be set to have certain takes. Again, this amendment is necessary for the social impact process. Clearly, local governments need to have an input because the amount of money that is taken out of the community through poker machines affects businesses and people in the surrounding area. The Government is giving power to local government to oversee establishments such as brothels. It should consider the considerable social impact of gambling machines. That is why this section, which prevents local governments having any input, should be deleted.

The Hon. IAN MACDONALD (Parliamentary Secretary) [10.49 p.m.]: The Government opposes Australian Democrats amendment No. 5. When the Gaming Machines Act was being drafted last year a number of Sydney councils indicated their intention to amend their local environmental planning instruments to restrict the capacity of registered clubs and hotels to install gaming machines.

The Government was of the view then, and is still of the view, that it is in the best position to regulate the availability of gaming machines in New South Wales through the Gaming Machines Act and the Gaming Machines Regulation. It acknowledges that local councils should be given the opportunity to have a say about the likely economic and social impacts of additional gaming machines in their local communities. As a consequence, the Gaming Machines Regulation requires that an applicant must provide a copy of a class 2 social impact assessment [SIA] to the relevant local consent authority, inviting written submissions to the Liquor Administration Board. The regulation also provides that the board must take into account any written submissions made on a class 2 SIA by a local council.

As councils have been given a significantly louder voice in decisions about the future placement of gaming machines through these proposed enhancements to the SIA process, it is not considered appropriate that councils be able to frustrate gaming machine operations through the use of their planning and consent powers. Therefore, section 209 of the Gaming Machines Act 2001 provides that an environmental planning instrument under the Environmental Planning and Assessment Act 1979 cannot prohibit or require development consent for, or restrict the installation, keeping or operation of, gaming machines in hotels and registered clubs. The Act also restricts councils' ability to impose conditions on development consents in relation to gaming machine operations. The Government believes that this scheme represents a sensible balance, and it opposes the amendment.

Reverend the Hon. FRED NILE [10.51 p.m.]: The Christian Democratic Party supports this amendment. The Deputy Leader of the Opposition and others should support this amendment because it seeks to recognise the power of local councils to control what happens in their areas. There has been debate in the media about poker machines in the Liverpool area. Suddenly, a new provision could enable a club to have 500 poker machines, which could have a major effect on the community, but council is held at arm's length. Council must

deal with the social and economic problems that occur in its area. Councils have a legitimate right to say what happens within their boundaries. Therefore, we support the amendment.

Amendment negatived.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Title agreed to.

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

ADJOURNMENT

The Hon. IAN MACDONALD (Parliamentary Secretary) [10.55 p.m.]: I move:

That this House do now adjourn.

SANDON POINT RESIDENTIAL DEVELOPMENT

The Hon. IAN COHEN [10.55 p.m.]: In 2001 the development application for Sandon Point went to the Land and Environment Court. During the case Wollongong council did not cross-examine Stockland's witnesses and gave no chance for the presentation of evidence relating to the environment, flood danger, infrastructure, Aboriginal heritage, and social and traffic impacts. Most of the community's huge volume of concerns about the site were never tested in court. Regarding European heritage, two community members were called to give evidence, but much of their evidence was censored by the council's legal team. One of the council's requirements before court was for Stockland to build its own railway bridge and access road. This requirement was resolved in a settlement room while the case was running.

The council emerged to allow an existing road to be used for residential access, with great savings to Stockland. This was one of 19 out of 21 issues dealt with in this manner during the case—all resolved to Stockland's advantage. Stockland states that its decision to purchase the land for stages one to six hung on a verbal agreement in 1999 from the Department of Land and Water Conservation [DLWC] which allowed Stockland to develop as close as five metres to Tramway Creek. Stockland requested an on-site meeting when the designated DLWC officer was on leave, and obtained permission from a relieving officer for a reduction of the creek buffer zone from the usual requirement of 40 metres to just five metres. Stockland's consultant, the DLWC and the Escarpment Commission of Inquiry recommend a 40-metre buffer zone on both sides of the creek as standard practice. Why has Stockland been given special treatment? Stockland declared that 40-metre creek setbacks would have rendered the development financially unviable.

The DLWC chose not to defend in the Land and Environment Court its standard practice on this and other issues related to flooding and water quality. This was because it had recently lost a similar case and was embarrassed by the five-metre promise made by its own officer. Stockland refers to itself as a responsible corporate citizen producing a high-quality development. A Stockland representative admitted that it would be the responsibility of the State's emergency services to rescue somehow the residents of 200 flood-affected houses when the next large flood occurs. Several resident access roads would be cut during a flood of the 1988 levels. Flood insurance would not be available to these residents. Wollongong council would be leaving itself open to be sued due to its inappropriate zoning of the land and for allowing such a development to occur. Independent scientific and cultural studies are needed to remove the concern that loyalty to a commissioning client influences its findings. There are two examples of inconsistent findings at Sandon Point.

During a council-funded study in 1992 an Aboriginal artefact was found on stage one land. In the 2001 Stockland-funded study the location of the artefact had shifted 25 metres. Its location now lay outside the development boundary. In 1992 a council-funded study revealed that 25 per cent to 35 per cent of stage one was a landslip zone. The piecemeal Stockland-funded study in 2001 failed to address this finding and cleared the same land for development. In 1992 BHP and Wollongong City Council colluded to eliminate the heritage listing of the historic old Bulli mine to Sandon Point tramway. It was the first built and is the last remaining of its kind. The delisting was discovered by the public, which was only partially successful in forcing the council to reinstate the listing.

In 1996 BHP was preparing to sell up at Sandon Point. On the draft local environment plan the route was shown as intact. After public exhibition of this plan council officers altered the plan without further public consultation. They eliminated the remaining heritage listing on the land for sale. This action, most likely illegal, resulted in a direct financial gain for BHP. In 2001, as an apparent civic gesture, Wollongong City Council bought back from Stockland beachfront land for almost \$1 million. Was this a million dollar donation to the developer? This particular portion of land cannot be developed and will always remain unchanged no matter who owns it. Stockland had bought the entire allotment from Sydney Water for \$2.1 million, knowing that only 20 per cent was zoned for development. Is this what Stockland means by "the transferring of privately-owned land back into public ownership"?

The legitimacy of the purchase of this same allotment of land from Sydney Water is a cause for concern. It is de facto Crown land and has been openly sought by the community to be returned to public open space since the 1980s. Sydney Water breached its own charter by falsely stating it had consulted Wollongong City Council, the local land council, the community and the National Parks and Wildlife Service over the sale. It was required to do this following the discovery of the ceremonial grave of the 6,000-year-old Kuradji man found during the sale process. Sydney Water sold the land containing at least one documented burial site to Stockland, with its full knowledge of the fact.

Before the Sandon Point development plan had gone on public exhibition, Wollongong City Council General Manager, Rod Oxley, stated in the *Illawarra Mercury* that the entire development was a "fait accompli". In February 2001 the National Park and Wildlife Service wrote a detailed letter to council regarding the preservation of flora, fauna and Aboriginal heritage at Sandon Point. This letter was intended to be seen by councillors before they voted on stage one. Council officers withheld this letter, which prevented its contents from influencing the vote. Numerous studies, for example, of flora and fauna, European heritage, and Aboriginal heritage have been ordered by council but not implemented by the administration. When questioned over the lack of action, staff replied with words to the effect, "My manager told me not to do it."

A wetland ecosystem upon the site, namely, the State-protected Sydney coastal estuarine swamp forest complex [SCESFC] was illegally slashed in September last year. Cooksons, a factory at Sandon Point, took the blame for it. It now turns out that the land is actually owned by Stockton. The Cooksons factory is soon to close and Stockland has earmarked its site for purchase if it has not already purchased it. On another SCESFC area the pattern of slashing exactly matches the development layout in that area. In September 2001 the following breaches have occurred with no action taken: illegal slashing of an endangered forest ecosystem on the site; illegal destruction of Aboriginal artefacts and at least 20 known occurrences of illegal excavations without Aboriginal site officers. [*Time expired.*]

GAZING OUT EXHIBITION

The Hon. AMANDA FAZIO [11.00 p.m.]: On Wednesday 24 April I had the pleasure of representing the Minister for Disability Services, the Hon. Faye Lo Po', at the opening of the Gazing Out Exhibition at the Firstdraft Gallery at Surry Hills. The exhibition was organised by Accessible Arts, a community-based organisation which believes that the arts enrich our lives in diverse ways, as spectators, amateurs or professionals, that everyone has a need for self-expression, and that people with disabilities are no different. Accessible Arts started in 1986 as an art project of Community Activities Network and by 1990 was an independent incorporated association receiving support from the Federal and State governments to provide a statewide service. Today Accessible Arts is a progressive arts organisation which develops innovative initiatives that are used as models. Inclusive arts practices encourage collaboration between the arts and disabilities communities and develop new technologies and methods of teachings to address access issues.

The Gazing Out Exhibition was a wonderful showcase for not just the work of Accessible Arts but for the talent of the artists who contributed their works. In our day-to-day life of work and family we can sometimes forget the importance of art and the power it has to shape our understanding of our environment and our world view. Art and artists continue to be controversial because they can and do challenge our beliefs and values. The Gazing Out Exhibition continues that tradition by providing the opportunity for artists with a disability to have their work placed on public view to be appraised and appreciated by the public. I acknowledge the excellent briefing that I was provided with by staff of the Department of Ageing, Disability and Home Care. These staff are able to appreciate the value of these artworks without dwelling on the disabilities of the artists. That approach was greatly appreciated by the artists. Their work was being valued for its artistic merits rather than on any other criterion. In particular, I want to focus on the work of a few of the artists participating in the exhibition.

Ali Mohammed Faqirzada had two watercolours on display, both depicting scenes from his native Afghanistan. The largest painting showed one of the statues of Buddha which were blown up by the Taliban last year. The other painting was a more traditional style miniature with fine detail and showed a high level of skill and wonderful technique. As a young boy, Ali's talents were recognised by his father, who sought out opportunities for his son, as no schools for the deaf existed in Kabul. Ali spent a lot of time in India from 1996 to last year, and was able to avoid most of the conflict, but was not able to pursue his art. Ali was granted refugee status in 2001 and has now settled in Sydney and is developing his English and Auslan skills. Ali is a charming young man who I am sure will become a valued part of the local artistic community.

Nguyen Doa Hoang also came to Australia as a refugee, arriving from Vietnam, via Thailand, in 1986. He worked as a machine operator for 13 years and pursued his love of photography part time. Due to a permanent back injury, he began working from a home studio as a professional photographer, which was the career he left behind in Vietnam. He stated, "The idea behind my work is that I like to paint but cannot." His photos show aspects of everyday life that also highlight the many cultural differences in our community. Finally, I want to comment on the work of John Havilah who produced ten small texta drawings, in combinations of red, black and blue colours. His works were entitled "My Drawings Nos 1-10". These finely detailed geometric pieces were some of the most popular on exhibition and many were sold on the opening night. John is a young man with an intellectual disability who creates very vibrant works, one of which was chosen for the cover of the exhibition catalogue.

One of the most important aspects of this exhibition was that the artwork was challenging, quirky, showed highly developed and diverse techniques, and was very impressive. All those present at the opening were also equally impressed by the works on display. My congratulations go to all those involved, especially the artists. On a slightly different note, I must say that I am overwhelmed by the response I have received to my last adjournment speech. I underestimated how many Ramones fans there are. But it would be remiss of me to not incorporate on the public record that not only is one of my puppies called Joey Ramone, but the other one is called Dee Dee, both being the names of members of the Ramones. They are both Shihtzu Bichon Frise crosses who can at times be as wild as the Ramones.

SELECTIVE SCHOOLS ENTRANCE EXAMINATION COACHING

The Hon. PATRICIA FORSYTHE [11.04 p.m.]: In recent weeks concerns have been expressed at many levels about selective schools and in particular the extent of student coaching—not coaching on the curriculum, for no-one could object to that, but on how to answer the examination questions in what is often described as examination hot-houses. On 13 June about 15,000 year 6 students will sit for places in the State's 17 selective schools. Let us be clear, entry into any of those schools is highly prized. I know, I am the product of a selective school. It is absolutely vital that the community has confidence in the examination process. This year, to address some of the criticism in relation to coaching and the apparent advantage that it seems to give some children, the Department of Education and Training has placed sample papers on its web site. It is this placement that has encouraged a concerned citizen, a former teacher at a coaching college, to write to me anonymously. Apparently the same person contacted the former shadow Minister in 1988. The allegations are grave. The 1998 letter which was enclosed began:

I wish to inform you of an illegal activity involving a coaching college named Preuni New College, of 29 The Crescent, Homebush obtaining or stealing unavailable selective school test papers set by ACER.

The letter I have recently received draws to my attention that the sample tests published by the New South Wales Department of Education and Training are exactly the same as the 1998 Pre-uni New College test papers. The papers were enclosed and indeed they are identical, identical in question order, in names and numbers. How can that be so? I have pondered all the possibilities. I do not say this lightly, as a commercial reputation is at stake. The system, as I understand it, is that the papers are set externally to the department by the Australian Council for Educational Research [ACER]. Schools are provided with the test but neither they nor their students retain copies and the department only retains one copy on file. How can a test given in 1998 by a coaching college be the same as the sample paper? No past papers are ever meant to be in general circulation.

In 1991 the owner of the Pre-uni New College, James Lee, was quoted in a *Sydney Morning Herald* article as saying, "We make up our own papers." Even if a sample test was used in a previous year's examination process, how did the college have an exact copy? Papers are not provided to the public. Questions can be many lines in length and I doubt that they could be memorised so accurately. I am aware from newspaper excerpts enclosed with the letters sent to me that a 1997 paper went missing from the Department of Education and Training and was the subject of some investigation. It is time the whole system was the subject of a further

investigation. I have today written to the Minister for Education and Training and the Independent Commission Against Corruption [ICAC]. I call on the whistleblower to come forward to the ICAC, and I call on the ICAC to give that person immunity as it is clear from the correspondence that he or she had an active knowledge of illegal events. The 1998 letter suggested some of the facts that need to be investigated. It said:

The examination cheating (at the college) has been going on for at least five years, teachers involved have been well paid (over \$150 per hour) for keeping this illegal activity confidential ... At Preuni New College we have actual past/present selective schools test papers, scholarship exam papers and OC test papers.

In the recent letter it is alleged:

... that they—

that is, Pre-uni—

had been using the same papers over many years including this year and they held other stolen papers.

Selective schools provide gifted students with a privileged opportunity. It is absolutely essential that the system is fair and above question and ensures that the best students, not the best coached students, are selected. It is time for a thorough investigation of the process and the security of the system. The investigation will need to look inside the department as well. My allegations are most serious. I have thought hard before naming the college, but not to do so would put at risk the good reputation of reputable coaching colleges.

NEW SOUTH WALES PARLIAMENTARY LIONS CLUB CHARTER NIGHT DINNER

The Hon. HELEN SHAM-HO [11.09 p.m.]: I shall update the House on the progress of the New South Wales Parliamentary Lions Club Charter Night Dinner, to be held at Parliament House on Monday 17 June at 7.00 p.m. Honourable members may recall that the new club was officially formed at a meeting held at Parliament House on Thursday 21 March this year. The club exclusively comprises members and former members of Parliament, and I am the elected Charter President. The honourable member for Maitland and Deputy Speaker in the other place, John Price, is the Treasurer and the honourable member for Camden, Liz Kernohan, is the Secretary. I commend those honourable members for the selfless way in which they volunteered for these jobs, despite their already busy schedules. The club also has the support of its four honorary members: the Premier, the Leader of the Opposition, the Speaker and the President.

At the formation meeting the club unanimously decided that as our first community project we would raise funds for the Ted Noffs Foundation and the Sir David Martin Foundation. It was also decided that our club's charter night—at which our charter certificate will be presented—would be conducted as a fundraiser for these two worthy charities. The Ted Noffs Foundation and the Sir David Martin Foundation share the common goal of assisting disadvantaged young people and their families, most notably in the areas of drug services and homelessness. I am sure honourable members will agree that this is a very worthy cause.

The Ted Noffs Foundation and the Sir David Martin Foundation also rely upon the generosity and donations of others in order to fund many of their programs. At this stage of the electoral cycle, when the majority of fundraisers are directed at raising money for political parties, charities such as these two foundations find it extremely difficult to raise funds. This is why I proposed the fundraising dinner in the first place. It would be a dreadful shame if these organisations were forced to close some of their programs.

Arrangements for the dinner are well under way, and I am in regular contact with Austin Chin and Wesley Noffs from the Ted Noffs Foundation, as well as Anna Menzies and Michael Sharpe from the Sir David Martin Foundation. I must also acknowledge the efforts and assistance of my husband, Robert Ho, who is on the board of the Sir David Martin Foundation. This is an extremely dedicated and committed group of people, and I thank them for their hard work to date. They have been an absolute delight to work with.

The Charter Presentation Dinner will be an historic occasion celebrating the foundation of the first State Parliamentary Lions Club in Australia. The evening also presents a rare and exciting opportunity for the community and corporate and government sectors to come together in support of a good cause. This is not something that happens very often. I am pleased to report that we have already booked about a dozen corporate, business and community tables, and a couple of Government Ministers, the Leader of the Opposition, the Speaker and the Deputy-Speaker, Parliamentary Secretary the Hon. Ian Macdonald and other prominent people have said they will come. Local Lions members and official representatives from Lions Clubs International also will be attending.

I do hope members of this House will show their support for our new Lions Club and for charity by attending the gala dinner on 17 June. Invitations will be forwarded to all members of Parliament within the next few weeks. As well as supporting a good cause, members can be assured of a very entertaining evening. Australian icon Barry Crocker will be one of our performers, as will an up-and-coming young Chinese singer who recently performed at the Prime Minister's garden party. I have had very good feedback about her performance.

The club is currently seeking sponsorships, donations and prizes to be auctioned or raffled on the night. We have received some very generous sponsorships and prizes to date, and I take this opportunity to extend my sincere thanks to all of our sponsors and contributors. These include Qantas, fashion designer Leona Edmiston, Lord Mayor Frank Sartor, artists Lisa Barnham and Max Magus, Alfred Lai of the Imperial Peking Harbourside Restaurant, Councillor Robert Ho of Sydney City Council, Eric Wong of Golden Century Seafood Restaurant, Kevin Lee of Chopsticks Chinese Restaurant, Joseph Wong of the Manly Pacific Parkroyal, William Yee and Eric Tam. I especially thank Alex and Nancy Ma of 1A Communications, who have so kindly agreed to sponsor the cost of printing our invitations and the commemorative booklet of the event.

I also express my warmest appreciation of our sponsors HSBC, who have taken out a \$10,000 sponsorship, and Project Tourism International, which also has pledged \$10,000 for the evening. Other sponsors to date are Star City and the Clubs Association Management of Australia. I hope to get more sponsors nearer to the charter night. Thanks must also go to two Ministers who have graciously agreed to allow the club to "auction" a lunch at Parliament House with them, to be hosted by me. The two Ministers are the Attorney General, the Hon. Bob Debus, and the Special Minister of State, the Hon. John Della Bosca, who will not be able to attend the function because of a prior engagement but who has shown his support for the evening by this kind gesture. Thank you, Minister. Perhaps other Ministers and members will follow suit.

Last, but not least, I thank all the charter members of the New South Wales Parliamentary Lions Club for their ongoing support. With their help and assistance I have no doubt that our Charter Presentation Dinner will be a great success.

NATIONAL AUSTRALIA BANK RURAL AND REGIONAL BRANCH CLOSURES

ANNIVERSARY OF FIRST AUSTRALIAN LABOR PARTY MEMBERS OF PARLIAMENT

The Hon. TONY KELLY [11.14 p.m.]: I am disgusted with the leadership team at National Australia Bank and its decision to shut up shop in 56 towns across rural and regional Australia. It is a shocking, poorly thought out decision, which will affect 14 country towns in New South Wales alone. It reflects a bank out of touch with the needs of country communities—a bank willing to abandon its obligations to the community in a relentless pursuit of obscene levels of profit, and cost-cutting for its own sake. The decision is a slap in the face for those country towns, many of which have actually started to turn things around and are heading towards a brighter future. But it is obviously a future without the National Australia Bank.

Let us revisit the chain of events leading up to this announcement. Despite a staggering \$2 billion profit last year and this year's \$2.2 billion profit announced just today—profits built on the fees and loyalty of ordinary customers—the management of the National Australia Bank, whose chief executive officer is reportedly on a base salary of at least \$2 million, managed to squander \$3.6 billion in a poor investment decision in the United States. After such a debacle one would expect those responsible, that is the management team and its leader, would be held accountable and promptly dealt with. The ordinary man in the street would see that as not only fair but a sensible business practice. This is why bank executives are on their multi-million dollar salary packages—to get things right, for the bank, its employees and most of all its customers.

But no, things work quite differently at the National. There, those responsible not only keep their jobs and their bloated pay packets, whilst country banks, their staff, customers and the community are made the fall guys for the management's failed overseas speculations. This blame-shifting and incompetence is matched by an audacity that knows no bounds. We had the spin doctors fronting up to the public explaining that the closure of banks was in no way degrading services, and that country people actually prefer and would come to love joining the queues at their already overstretched post offices.

I also received recently some brochures from the National Australia Bank promoting the bank's "continuing commitment to the community". One of those commitments, according to what can be read on the back of the pamphlet, is an online service that asked for "ideas that work". May I suggest that a fully functioning National Australia Bank in places such as Gulgong, Milton, Baradine or any one of the 14 New South Wales country towns that is set to lose a branch would be seen by those communities to be an idea that works!

As I have said, the National Australia Bank's decision has revealed that it is an institution that is out of touch with the needs of everyday Australians. The decision deprives the affected towns of services and pay packets being spent in the local community, week in, week out. It is an antisocial, anti-growth and anti-country decision. Rather than being a partner in rebuilding country New South Wales, the National Australia Bank is clearly unwilling to carry out its obligations to the community. Rather than be part of the solution, it is being a hindrance to the ongoing vitality and growth of the country. To add insult to injury, the National Australia Bank refuses to do the right thing and accept the offer made by the ANZ bank to take over the branches.

I call on the National Australia Bank to revisit the ANZ bank's offer so that country customers who have been abandoned can access decent banking services, not just second-rate facilities. If the National Australia Bank intends to renege on its commitments to long-serving staff, loyal customers and their communities, it should at least have the decency to allow some other banking organisation to offer people the services they pay for and deserve.

I take this opportunity to alert honourable members to the fact that today is a very important day for the Australian Labor Party—the anniversary of the election of the first three Labor Party members to Parliament in this country. In 1890, three members of the Australian Labor Party were elected, coincidentally, to the South Australian Legislative Council. In the very same year, a member of the Australian Labor Party was elected to the lower House in South Australia—not to a city seat, but to a country seat—so the very first Country Labor member of Parliament in Australia was also elected in 1890. It is with pride that I celebrate the election of those members of the Australian Labor Party in 1890 and remind members of this House that, as the oldest democratic socialist party in the world, the Australian Labor Party is assured of representation in Australian Parliaments over the next 100 years.

WORKCOVER DEFICIT

The Hon. GREG PEARCE [11.18 p.m.]: I am alarmed that the Carr Government has failed to deal with the WorkCover deficit and is continuing to hide the deficit's impact by the adoption of shady accounting practices. The WorkCover deficit is being treated in much the same way by Premier Carr and Treasurer Egan as the Enron and HIH Insurance boards treated their problems. The Government has failed to deal with a deficit of over \$2.5 billion. Despite so-called reforms, the deficit is continuing to grow to the point that it will exceed the \$5 billion that was lost by HIH Insurance. The Government has also refused to address concerns expressed by the New South Wales Auditor-General, major accounting firms and even the rating agencies that award the vital triple-A rating to New South Wales.

The situation is that the New South Wales Government is behaving like the boards of HIH Insurance and Enron. The WorkCover deficit is being hidden by tricky accounting methods and is being kept off the State's balance sheet. Premier Carr and Treasurer Egan have been shuffling and sidelining the deficit since they came to power in 1995 and have been treating the \$2.5 billion plus deficit as though it does not really exist. They just refer to it in a note to WorkCover's accounts instead of including it in the debts of the State, and they are the same tactics that were used by the directors of HIH Insurance and Enron.

Of further concern is that while every other insurance scheme has to comply with Australian Prudential Regulation Authority [APRA] guidelines and maintain sufficient reserves, WorkCover does not. In fact, after that was done once in 1995, Premier Carr and Treasurer Egan immediately reversed it. The Government should immediately adopt the Auditor-General's view that the scheme's deficit should be consolidated in the total State accounts. The Government should also reconsider adopting APRA requirements as part of the scheme. The Auditor-General, Mr Sendt, has said:

... we have qualified the total State sector accounts because of our belief, based on accounting standards, that it [the deficit] should be recognised in the State's finances.

When the Treasurer, Michael Egan, is asked about the treatment of the deficit, he claims he is relying on the Crown Solicitor's advice that the deficit does not have to be included in the State's accounts. However, not only has Mr Sendt repeatedly raised this issue, he has obtained the advice of five leading accounting firms and they have unanimously agreed with him. When I asked Minister Della Bosca, who is present in the Chamber tonight, to tell me the difference between the way the Enron board disguised its true deficit and what the Premier and the Treasurer are doing, Minister Della Bosca responded:

The very substantial difference is that the accounts of WorkCover and any qualification or otherwise of the Auditor-General are in the full public arena.

That is certainly true. But Auditor-General Sendt dismissed that argument. On 15 March 2002 he said:

The consolidated financial statements of the NSW Government presented to Parliament do not include the results of the scheme's operations for the year, nor its accumulated deficit, which, as you would all be aware, last June was about \$2.75 billion.

This is not just some academic accounting argument. What we were told is that by keeping the figures off the accounts, the New South Wales accounts will be affected by several billion dollars. There is also the possibility that the State's triple-A credit rating will be interfered with. Egan is simply trying to support his claims that the budget is in surplus by hiding this problem. Mr Sendt said in relation to including the deficit:

It would certainly take a few billion dollars off the Government's net asset position.

Mr Lee White, the Assistant Auditor-General, also said:

The WorkCover statutory funds have assets and liabilities, the difference being the deficit. So all of it would go in: you would take in the assets and you would take in the greater liabilities, and it would have a deficit effect.

The dodgy accounting practices have been going on ever since Carr came into government. In the Auditor-General's reports for the years ending 30 June 1996 and 30 June 1997 the Auditor-General actually expressed concern about the future viability of the WorkCover scheme as a going concern—in other words, whether the scheme was really bankrupt. We have heard it all before. As I said, Mr Sendt's predecessor was concerned in 1996 and 1997 about the viability of the scheme's statutory funds. However, in 1998 he changed his mind. In the Auditor-General's report to Parliament in 1998 he said:

Because the Government has now taken steps to replace the scheme with a privatised system, it was not considered necessary to highlight this matter in this year's audit report.

We now know that the privatisation will not proceed. So what is the position with this deficit? Writing in the *Australian Financial Review* on 10 April 2001, Tony Harris, the former Auditor-General, remained convinced that the scheme was not viable, that it was bankrupt and had lost money in the last six years. The scheme's actuary, David Finnes, told a committee:

If you were talking to an insurance company, they would say it is a debt and that the scheme was basically bankrupt.

Even Minister Della Bosca admitted the same at a budget estimates hearing on 20 June 2001. He compared the deficit to the deficit in HIH and he ended by saying, "If WorkCover were a private insurer, it might well have had to be put into liquidation sometime ago." It is time the Government came clean on all of these accounting issues because at the end of the day someone has to be responsible for this deficit. Mr Sendt says he believes that the Government does have ownership of the deficit, so let us see it in the accounts. [*Time expired.*]

BRAZILIAN LANDLESS WORKERS MOVEMENT

Ms LEE RHIANNON [11.23 p.m.]: I recently had the opportunity to meet with members of the Brazilian Landless Workers Movement. This is the largest social movement in Latin America, with an estimated 1.5 million landless members organised in 23 of the 27 states. The members I was fortunate to meet informed me that their organisation carries out long overdue land reform in a country mired by unjust land distribution. In Brazil less than 3 per cent of the population owns two-thirds of the land on which crops could be grown.

Since 1985 this organisation has peacefully occupied unused land, where it has established co-operative farms, constructed houses and schools for children and adults, and promoted indigenous cultures, a healthy and sustainable environment and gender equality. The organisation has won land titles for more than 250,000 families in 1,600 settlements, while a further 70,000 encamped families currently await government recognition. Land occupation is recognised in the Brazilian Constitution, which says that land that remains unproductive should be used for a "larger social function". The organisation's success is recognised as being in its ability to organise and educate. We are hoping that an exhibition of photographs of the work of the organisation can be held in the Fountain Court area of Parliament House.

[*Time for debate expired.*]

Motion agreed to.

The House adjourned at 11.25 p.m. until Tuesday 4 June 2002 at 2.30 p.m.
