LEGISLATIVE COUNCIL

Tuesday 11 June 2002

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

The President offered the Prayers.

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

LIQUOR AMENDMENT (SPECIAL EVENTS HOTEL TRADING) BILL

POULTRY MEAT INDUSTRY AMENDMENT (PRICE DETERMINATION) 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 these 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.

CIVIL LIABILITY BILL

Message received from the Legislative Assembly agreeing to the Legislative Council's amendment.

LOCAL GOVERNMENT AMENDMENT (ENFORCEMENT OF PARKING AND RELATED OFFENCES) BILL

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

MADAM PRESIDENT

The Legislative Assembly has considered the Legislative Council's message and schedule dated 2 July 2001 requesting the concurrence of the Legislative Assembly with the amendments to the Local Government Amendment (Enforcement of Parking and Related Offences) Bill, and informs the Legislative Council that the Legislative Assembly agrees with the proposed amendment No 1 and disagrees with the proposed amendment No 2 for the following reasons:

The first part of the amendment deals with limiting the period of revenue-sharing with North and South Sydney Councils to 5 years. The councils and the Local Government and Shires Association have indicated to the Government that they are happy for ongoing revenue sharing arrangements to be entered into.

The second part of the amendment deals with the portion of revenue shared in the revenue sharing arrangement. It states that the Treasurer and council would share the monies raised from parking infringement revenue equally, once expenses had been taken out.

While the Government agrees with net revenue sharing in principle, if such a stipulation were included in the Act by way of this amendment, it would limit North and South Sydney Councils to a 50% share of the revenue. It would not allow these councils to negotiate a larger share of the revenue. In fact, North Sydney Council already has an agreement where it retains 100% revenue for collecting parking infringement in a certain area of its boundaries. This amendment would therefore directly disadvantage that council. The Government is committed to the principle of net revenue sharing, but believes it should be included in the agreements with councils, rather than in the Act, as this provided for a better outcome for the councils.

Legislative Assembly
7 June 2002

JOHN MURRAY
Speaker

Consideration of message deferred.

PETITIONS

Freedom of Religion

Petition praying that the House retain the existing exemptions applying to religious bodies in the Anti-Discrimination Act, received from **the Hon. Jan Burnswoods**.

NOTICES OF MOTIONS

Business of the House Notice of Motion No. 1 withdrawn on motion by Ms Lee Rhiannon.

BUDGET ESTIMATES AND RELATED PAPERS

Financial Year 2002-03

Debate resumed from 4 June.

The Hon. JOHN RYAN [2.40 p.m.]: The 2002-03 budget is every bit what we have come to expect from a traditional Carr-Egan Labor budget. It is a triumph for the spin-doctors on the evening it is delivered but unravels the next day when the fine print is examined. This lazy budget was such a risk for the Government that its release had to be carefully scheduled to come to notice only an hour before the evening news, because, like a vampire, it would not survive a moment of scrutiny in the daylight. This budget has already started to unravel. That is not my opinion; that was the judgment delivered in a *Sun-Herald* editorial at the weekend.

The Hon. Michael Egan: You read the *Sun-Herald*?

The Hon. JOHN RYAN: Yes, and I hope the Treasurer read it, and read it carefully. It stated:

> State budgets have become media driven events in which the measure of success is in the newspaper column centimetres and air time. That is why reading the fine print is so instructive.

We will be reading a bit of the fine print of the budget during this contribution. The editorial continued:

> For example despite all the hoo-ha, the total amount of money spent on major new projects in health, education and training, transport and corrective services is just $330m dollars.

So interested is the Treasurer that he is leaving the Chamber, unable to take the scrutiny.

The Hon. Jan Burnswoods: Point of order: First, the honourable member totally breached an undertaken given by the Opposition Whip and is speaking to protect his leader. Second, he made scurrilous allegations about the Leader of the Government.

The Hon. John Jobling: Point of order: The point should be made clear that in my humble opinion there is no point of order. The member speaking is leading for the Opposition; whether it is the Leader of the Opposition or another member should make no difference. It is the choice of the Leader of the Opposition who will speak. Clearly, there is no point of order.

The PRESIDENT: Order! Only the member who seeks and receives the call may address the Chair. However, I remind members that Standing Order 81 is clear: imputations and personal reflections against other members of the Parliament are disorderly.

The Hon. JOHN RYAN: I was only stating a fact, Madam President. The same editorial continued:

> … in a remarkable act of spin doctoring, the Department of Community Services case was presented as a triumph. In fact, after all the horror stories from the NSW Ombudsman and the 21 child death fatalities reported by the Child Death Team, the Government found funds for just 14 case detection officers.

Now that the Carr Government has been in office for eight years, we see patterns emerging that establish for certain that it is a tired, lazy and visionless Government whose best days are behind it. Spending on Education in this budget is 10 per cent less than the Fahey Government allocated to that portfolio in 1994, when measured as a proportion of the whole budget. In 1994, Education spending made up 26.5 per cent of the general budget sector. This year the Carr Government will commit only 23.7 per cent. In the 1994 budget, the Fahey

Government spent 26 per cent of its budget on Health, compared to 25.2 per cent in this budget. In real terms, the Carr Government is now spending less on capital works for improving public transport than John Fahey did in 1994.

For example, in its last budget, the Fahey Government committed $677 million to the various arms of State Rail. This year's budget for rail transport is $783 million, just 15 per cent more, during a time when prices have risen by 20 per cent. I cannot believe it: there is only one representative of the Government in the Chamber, not even a Minister, to hear the Opposition's reply to the budget. That indicates the unbelievable arrogance of the Government. When it comes to building and renovating new hospitals, the Carr Government's record is even worse. 'The $504 million that the Carr Government will allegedly spend on hospitals during the next year represents a decrease of 10 per cent in real terms when compared to the last Fahey Government budget. And I say "allegedly spend", because this year's capital works budget for the Health portfolio includes around $50 million worth of projects that were either not started or completed last year.

This budget commits $50 million to office fit-outs and relocations and just $40 million to new hospital building projects. That fact alone benchmarks how much the Carr Government has lost touch with the needs of the people in this State. While the Government spends $50 million on moving public servants in and out of new office space, undervalued nurses struggle with pay packages that do not measure up to those of equivalently trained health professionals. The budget does nothing to address the issues that keep half of the registered nurses in New South Wales out of our public hospitals. And without nurses, hospital waiting lists climb and the health needs of many are left unattended.

Currently, 52,200 patients are waiting for elective surgery, and nearly 8,000 of them have been waiting for more than a year. When Labor came to power over seven years ago on a promise of halving hospital waiting lists there were 44,700 waiting for elective surgery, and only 2,265 who had waited for more than a year. Teachers still struggle in crowded infants' classrooms, with the exception of those lucky few who may be involved in the embarrassingly low $5 million trial of smaller class sizes. This budget does nothing to address the falling retention rates that this Government has presided over. When Bob Carr took office in 1995, 70 per cent of young people completed six years of high school. Now the number is just over 67 per cent and it is falling. If it were not for the better rates that are experienced in the private school system the numbers would be even worse.

Department of Community Services workers now claim that the Government has amputated itself from humanity. Very little of this budget is directed to addressing the distressing and increasing levels of child abuse and neglect in our State. Under this Government the face of the Police Service has increasingly become an eaglenet telephone on a locked police station door. The Government has closed 80 police stations, thereby shredding the link between the community and the police that is so necessary for responsive law enforcement. We could compare the Government's public relations babble that appears in the budget papers to the more objective statements about performance indicators for police that appeared in last year's review by the Auditor-General. He wrote:

> With the exception of sexual assault, New South Wales rates of reported crimes against the person are well above the national average.
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> Based on data from the *Report on Government Services 2000*, there were 268 police staff per 100,000 population in New South Wales in 1998-99, compared to a national average of 276.
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> New South Wales (Police) ranks at or below the national average (with the exception of assault) in finalising investigations, the Police Service has been able to improve its position in most reported categories.

A fair amount of the Treasurer's Budget Speech was spent biting the hand of the Howard Government, ignoring the fact that it has been generously feeding him for the past seven years. The bottom line is that the budget is hundreds of millions of dollars better off because of the sound economic management of the Howard Government.

The Hon. Dr Arthur Chesterfield-Evans: Oh, come on.

The Hon. JOHN RYAN: The budget papers brag that interest payments have dropped from 8¢ for every revenue dollar to just 3¢, saving more than $1,000 million dollars every year. And who did that! Budget Paper No. 2, page 4-13, states:

> Gross debt interest expense is expected to fall from $1,792 million to $670 million over the next eight year period ending 30 June 2006 due to ongoing debt reductions as old loans in the debt portfolio are replaced with new loans at lower prevailing interest rates.

And who has been working on interest rates? Clearly, it was the Howard Government. State Government coffers will also be improved as a result of John Howard's policy of giving tax incentives to families to encourage them to take up private health insurance. Fees paid by private patients treated in our public hospitals will increase to $542 million this year compared with $406 million a year in 1999. That means that the State Government has $136 million more to put into the Health budget, a fact that makes its poor performance in Health capital works even more reprehensible.

Over the four years to 2001-03 Commonwealth grants have exceed the New South Wales budget forecasts by well over $900 million. Rather than blaming the Howard Government, the Treasurer should be thanking Mr Costello and Mr Howard for building an economy in New South Wales that has delivered the Carr Government, and the people of New South Wales, windfall after windfall, covering up Labor's lack of financial discipline and credibility.

The budget papers show that the Treasurer misled the media and people across the State when he claimed that the budget had to be delayed a week because New South Wales had been shortchanged by the Commonwealth. The budget papers show that this year New South Wales will receive $15.1 billion in Commonwealth grants for 2002-03. This represents $250 million above the estimate in last year's budget. The Treasurer should stop carping about the changes to the Commonwealth tax-sharing arrangements. The money they are complaining about losing this year is the six-monthly increases in petrol tax that the Commonwealth no longer collects. This tax has gone because the people of Australia wanted action to stem increases in petrol prices. The action the Commonwealth has taken will contribute to a reduction in the rate of inflation, and that will be welcomed by the community at large and assist the bottom line of the New South Wales budget by reducing expenditure in the future.

The Treasurer has done his usual grandstanding at lunches in the central business district, telling businesses that the budget produces a surplus. The surplus in the budget is achieved by accident, not by responsible economic management. That is not a partisan assessment from the Opposition; successive reports of the Auditor-General prove beyond doubt that the Government would have faced a deficit in the past three years if it had not been rescued by an unexpected boom in the property market yielding unexpected tax windfalls. For example, in assessing whether the Government had complied with the principles set out in the General Government Debt Elimination Act, the Auditor-General said in his March 2000 report to Parliament that it was "unclear" whether:

> … the 1998-99 Budget result complied with the principle requiring achievement of the Act's short-term fiscal target ('a sustainable surplus budget'). Both the forecast surplus in the 1998-99 Budget and the actual surplus for the year included extremely buoyant taxation revenues.

He also said:

> Operating expenses of the General Government Sector were $1,586 million higher than the budgeted amount.

But fortunately for the Government, he also said:

> State revenues rose by $1,573 million in 1998-99 compared to 1997-98, more than 2.4 times the budget projection of an increase of $646 million.

Last December he said something very similar about last year's budget. He said:

> The GFS-based 'Statement of Budget Result', dealing only with the General Government Sector, showed a surplus. This surplus, while very close to the Budget estimate, came after revenues and expenses both substantially exceeded Budget.

He went on to say:

> Excluding [significant] items, the actual result was a $268 million deterioration on Budget. Expenses exceeded Budget by $1.8 billion but the impact of this was largely offset by unbudgeted revenue of over $1.5 billion.

If I were to accuse the Treasurer of providing the Parliament with budget papers which were totally unreliable and practically indecipherable he would accuse me of crass politics. However, that is what the New South Wales Auditor-General has said, albeit in a slightly more tempered way. In his introduction to his annual report on the Treasurer's public accounts and the total State sector accounts, the Auditor-General said:

> With recent major changes to both accounting standards and the way GFS is applied, analysis of trends is difficult. It is also made difficult when the Budget Papers give little information to aid in understanding the State's underlying position.

Nothing in these budget papers does anything to address that concern by the Auditor-General. However, I understand the reason, and it was well explained by the Auditor-General, who said:

> This information would allow Members of Parliament and interested readers to judge whether past Budget surpluses have been the result of sound financial management or buoyant revenues. Without this information, judgments cannot be reliably made.

The Auditor-General is being way too generous to this Government. There is no way that this Government, which values spin over substance, would ever want honourable members or the public to know whether their budgets were produced by accident, chance or sound management. The likelihood is that they are the result of accident and chance. It is no surprise that the Government has failed to rein in expenditure or provide meaningful tax relief. The Labor Government has collected $12.2 billion in additional revenue over and above what it had estimated between 1995-96 and 2001-02. Actual revenue has on average exceeded budget estimates by 6.5 per cent annually—usually more than double the rate of inflation.

The budget figures show that in 2001-02 Labor will collect total revenue of $33.5 billion, which is $1.3 billion more than estimated, and State taxes of $13.358 billion, which is $1.27 billion more than estimated. In the time Bob Carr has been Premier, revenues have increased by 54.6 per cent. In the same time inflation has increased by only 20 per cent. In real terms, Bob Carr has 34.6 per cent more money to spend than the previous Coalition Government received in its last year of office. One would have to say that with that sort of revenue, only a fool would not be able to balance the budget. The Premier and the Treasurer have simply been riding the property boom. In 2001-02 the Labor Government collected $4.344 billion from property taxes—$1.019 billion more than it had estimated. It has once again underestimated its 2002-03 figures. It estimates that it will collect $4.1 billion from property taxes in 2002-03—but it is very likely to again collect much more.

Behind these statistics are hard-working families who are struggling to get ahead. A family that lives in a median-price home valued at approximately $350,000 and wishes to buy another house, perhaps to improve their job prospects, will have to take into account that the Treasurer's stamp duty will be an extra $11,240, which, if added to their mortgage, will cost them an extra $80 a month. Renters have not missed out on their chance to contribute to the State Government either. Land tax, as a proportion of State taxation, has doubled under this Treasurer, and the receipts have risen from $538 million under John Fahey to $1,047 million in this year's budget, a staggering 94 per cent increase—five times the rate of inflation. A land tax bill may have a property owner's name on it, but it will be a tenant, frequently someone of modest means, who will wind up paying the increase.

The story is similar for payroll tax—the Government's tax on jobs. The budget anticipates receipts of $4,246 million in payroll tax this year. That figure is 64 per cent higher than the amount collected under the last Coalition budget, representing a rate of increase more than three times the rate of inflation. Before I leave the topic of payroll tax I should give a full analysis of the Treasurer's alleged generosity. This budget claims to reduce the payroll tax rate from 6.2 per cent to 6 per cent. That is still the highest rate of payroll tax in the nation. However, the revenue lost by the rate cut will be almost made up by broadening the payroll tax base to include fringe benefits and eligible termination payments. After handing business back $142 million in a full year from the rate cut, the Government will claw back $117 million by broadening the payroll tax base. The full benefit of this budget's tax relief of $215 million pales into insignificance when compared with the $1,600 million extra tax the Government is due to collect on current estimates. It equates to a tiny 0.65 per cent of the total revenues in the budget.

I should leave the last word on tax and expenditure restraint to the Auditor-General, just in case the few honourable members opposite accuse us of partisanship. Last December the Auditor-General included two very interesting tables in his report to Parliament in an attempt to show what the budget result would have been if the Government had increased revenue and expenditure by no more than the amount required to compensate for inflation and population growth. In the budgets from 1996-97 to 2000-01 the Carr Government raised $5.7 billion more in revenue and spent $6.5 billion more than the amount needed to cover inflation and population growth. These results suggested that the Government does not know the meaning of the word "restraint".

While many of the budget overruns were expected, such as the bail-out for HIH insurance policies, budgets have to be framed in such a way as to cater for the unexpected, particularly in times of buoyant revenues like the present. This Treasurer, in particular, does a lot of bragging about his efforts to contain public debt. It is instructive to read the last budget of the former State Government. It becomes very apparent from that document that the former Greiner and Fahey governments initiated most of the policy settings that have resulted in the reduction of the State's debt. The sale of the State Bank removed a huge amount of contingent liabilities.

The restructure of the State's public sector superannuation schemes was completed between 1989 and 1992, well before the Carr Government took office. From 1994 the Coalition Government commenced making provision for additional funding to cover unfunded superannuation liabilities.

All the current Government needed to do was continue the same policy. The Treasurer's only contribution to the reform of State superannuation appears to have been an abject disaster. In 1999 the Treasurer legislated to authorise a $3 billion loan aimed at funding an offer to remaining members of old superannuation schemes to convert their entitlements into a lump sum and then join the less expensive First State Super [FSS], which is the fully unfunded superannuation scheme started by the Fahey Government. The Government claimed that the offer had the potential to significantly improve the State's financial position. The Treasurer said that if 16,000 public servants accepted the conversion offer, the unfunded superannuation liabilities would be reduced by more than $1.5 billion. From here I should let the Auditor-General tell the story:

> The conversion offer closed with minimal acceptances—approximately 1,100 members with the value of superannuation benefits transferred to FSS of approximately $192.6 million … NSW Treasury has advised the Audit Office that external costs for preparation of the first offer were in excess of $1 million while the second offer costs were approximately $2 million.

The Auditor-General went on to say:

> It would be appropriate for NSW Treasury to undertake a post-evaluation review of whether the benefits achieved exceeded the costs of the offer.

I am certainly waiting—because it has not happened yet—for the Treasurer to explain to this Parliament why he spent $3 million of the State's scarce resources achieving nothing. It is instructive to read a couple of paragraphs from Budget Paper No. 2 that try to hide, but nevertheless acknowledge, the efforts of former Coalition governments in the so-called miracle that this Treasurer frequently and unfairly claims entirely for himself. The first paragraph reads:

> In 1993, a funding plan was developed with the objective of fully funding superannuation liabilities by 2045. As a result of higher than originally estimated employer contributions, various liability management initiatives and favourable actual investment returns over a number of years, the Government has brought forward the full funding target date by 15 years from 2045 to 2030.
>
> New South Wales' superannuation liability position improved significantly during the 1990s.

Guess who was in office for nearly half of that period? The second paragraph reads:

> When the funding plan was revised in 1995, the net unfunded liability projection for 2001 was $14,200 million, $6,073 million more than the actual liability estimate actuarially assessed at that date. This has made possible the adoption of an earlier funding target date of 2030, which can be achieved on the basis of the funding shown in Table 4.8, and assuming government superannuation contributions are indexed annually by 2.5 percent until 2030.

Most of what the Treasurer claims as his effort to fund unfunded superannuation liability is the result of a mathematical accident, and that is not something he tells the House too often. The policy settings that he inherited were left behind by the former Coalition Government. Because the Government likes to make crass political statements about the Hon. George Souris, it is important to point out that one of the contributors to the funding of the superannuation unfunded liability was the former finance Minister, George Souris. I have noticed over time that the amount of information provided in the budget papers has become less and less, and what is left has become increasingly technical. Constant changes in accounting standards and methods make year-to-year comparisons more difficult.

Additionally, the Carr Government has done nothing to provide better output information that members of parliament and the public must have to make assessments as to whether government services are provided effectively and efficiently. Increasingly political public relations and spin replace information in the budget papers. Information that the Government may find embarrassing is somehow lost. For example, honourable members will look a long way to find the table of interstate taxation severity that used to be in the Fahey Government budgets. That has gone, mainly because the New South Wales Government finds it too embarrassing to publish. The Auditor-General has also made a number of speeches that make a similar point, and it is worthwhile quoting them for the information of the House. The Auditor-General reported:

> Each year the taxpayer contributes around $1.5 billion to the New South Wales Police Service. Why do police services in New South Wales cost less per capita than in Victoria? Or, to put it another way, why do we spend less on police services here? Is it because the police are more efficient here, or is it because they provide a lower quality service? Or is it because we have less crime in New South Wales?

That is certainly not the case. The report of the Auditor-General demonstrates that we have more crime in New South Wales and fewer police, so the only reason the Government spends less on police is that it obviously does not regard that as a high priority for attention. The Auditor-General's report continues:

> If you look at the Annual Report of the New South Wales Police Service─easy enough to do, it's on the Police Service web site—you won't find a single set of statistics with any interstate comparisons to help you answer those questions.
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> Similarly, why is the per capita cost of running the court system in New South Wales so much higher than in Victoria and most other States? Does the annual report of the New South Wales Attorney General's Department disclose that fact?
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> Does it provide any comparisons with other States of total cases dealt with, or average cost per case? Does it disclose how long you might be held in prison on remand awaiting trial in this State compared to other jurisdictions? I'm afraid the answer to each of these is 'no'.
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> I could ask exactly the same type of questions about the health system. Does the New South Wales Department of Health have interstate data on average cost per admission or per surgical procedure or per bed-day? Does it have this information on waiting times for elective surgery or in emergency departments? Does it have interstate data on the proportion of unplanned re-admissions or of surgical patients getting an infection—two generally accepted measures of hospital effectiveness.

Honourable members will not find any of that information in the annual reports or the output data in the budget papers, the very information that would tell the public whether the money that is being spent in New South Wales is being spent with any effectiveness. Given the increasing levels of taxation and expenditure in this State, and despite the fact that elective surgery is not decreasing in this State, it is hard not to come to the conclusion that an enormous amount of the health budget in this State is wasted. I am pleased to say that my Leader, John Brogden—in contrast to the Treasurer, who I hope has delivered his last budget—has committed a future Coalition Government to two new measures that will improve budget transparency. First, he has committed us to an independent review of State taxation. Second, he has committed future Treasurers to having budget forecasts signed off by the Secretary to the Treasury to certify that the figures in them have been prepared by officials free of political interference.

I challenge the current Government to subject itself to that sort of transparency. We will spend all of three days considering the budget estimates, and the hearings will all be cobbled together at a time designed to attract the least media attention. The level of scrutiny that this Government has clamped on the budget papers is a complete disgrace. The only reason it has done so is that the Opposition, like the Auditor-General, has concluded that the budget papers disclose nothing. They are full of political spin. They do not provide any meaningful information to the public to allow us to work out what the budget papers mean. If honourable members have discovered in their efforts to read the budget papers that are not very clear, they are not alone: the Auditor-General, who used to work in Treasury, is battling for better detail. I would like to see more detail because, as I have often said to this House, the most powerful thing a government does after it is elected to office is spend the considerable resources that are collected in revenue—about $33 billion a year as it now stands.

A comparison of the level of scrutiny we give to legislation, which often does not touch the lives of individuals, and the lack of scrutiny given to the budget—largely because any attempt to scrutinise it is clamped down on by the Government by its clever use of the numbers in this House—marks a sad day. Those are matters to which we should pay more attention because they are the benchmark of whether this is a useful House of review. If we do not review the budget and subject it to scrutiny, the Government gets away with blue murder—as it has done with this budget. This Government spends billions of dollars but provides little feedback on whether that level of spending has any beneficial impact.

I am not an opportunist regarding rising levels of crime, and I generally temper my views on law and order, but if the Auditor-General of New South Wales says that crime in this State is increasing, I cannot deny or ignore that. If the Auditor-General says that this State spends less on police than any other State in the nation, I cannot ignore that. If the Auditor-General says that we have no meaningful data by which to assess the Health budget, I cannot ignore that. If waiting lists published by the Government tell us that three times more people are waiting for more than 12 months to have elective surgery than when Labor came to office in 1995, the people of New South Wales will not ignore that and will keep that in mind until they chase this Government out of office.

There is every reason why the Coalition should be ebullient about its chances at the next election. At last we are beginning to demonstrate that this Government is more committed to issues management than to the real things that affect the people of New South Wales. If the Government has the audacity to admit in its budget papers that this year it will spend more on moving public servants to new premises than it will spend on new

public hospital facilities or projects, then its best days are behind it. The Government is tired and arrogant. It will not be long before the people of New South Wales wake up to that fact, throw it out of office and pass the baton to a group of people, led by John Brogden, who are determined to make sure that this State's public servants and all the resources available to it serve the people of New South Wales to the best extent possible.

I look forward to the further, though limited, scrutiny that Opposition members will be able to give this budget. I have no doubt that the Coalition will seek to demonstrate that the Government has failed on critical social measures. The Government is not protecting children, healing the sick in our hospitals, or protecting the community as it should with the Police Service and court system. Fair Trading is not protecting consumers. No matter what portfolio is referred to, overwhelmingly the Government is failing by any benchmark to do with its budget the things that it should be doing to make the lives of the people of New South Wales better. The Government is coasting on the coat tails of revenues provided by the Howard Government, but it is not putting much thought into expenditure of those revenues. I commend the further scrutiny of the budget to the House. I have little doubt that by the time the scrutiny of this budget is finished the people of New South Wales will be more convinced than ever that the Coalition is well suited to take over from the Labor administration after the election in March 2003.

Debate adjourned on motion by the Hon. Peter Primrose.

LEGAL PROFESSION AMENDMENT (NATIONAL COMPETITION POLICY REVIEW) BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.13 p.m.]: I move:

That this bill be now read a second time.

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

Leave not granted.

Given that leave has been viciously denied me, I will give the House the benefit of my written words. The Legal Profession Amendment (National Competition Policy Review) Bill continues the process of reform to the regulation of the legal profession which the Government has undertaken since 1995. The changes to the system of regulation represented in the bill will reinforce the position of New South Wales as the pre-eminent Australian jurisdiction in terms of the effective and transparent regulation of the legal profession. Many of the reforms outlined in the bill were first recommended by the Attorney General's Department in its report on the National Competition Policy review of the Legal Profession Act. Since that report was completed, a detailed consultation process has taken place, and the result is the bill before the House.

The first major reform contained in the bill relates to the practising fees for solicitors and barristers. The Act already provides that membership of the Law Society, in the case of solicitors, or the Bar Association, in the case of barristers, is voluntary. However, the practising fees levied on solicitors and barristers include the cost of both membership services and the regulatory activities that the Law Society and Bar Association conduct, as required by the Legal Profession Act. The bill provides for the practising fee to cover only the costs of the regulatory activities undertaken by the Law Society and the Bar Association. This fee will be approved by the Attorney General. The membership or representative activities will be included in a separate, optional membership fee, which solicitors and barristers will not need to pay unless they propose to join the Law Society or the Bar Association. This reform will bring about a true separation of the regulatory and membership functions of the Law Society and the Bar Association. The resulting benefits will include more transparent cost structures of the Law Society and the Bar Association, and potential savings for consumers; and the ability for solicitors and barristers to choose whether they wish to contribute to the cost of membership activities conducted by their professional associations.

In order to ensure the accountability of the Law Society and the Bar Association, the Attorney General may request that budgets be submitted to him before approval of the practising fee. The bill also provides for a person to be appointed by the Attorney General to examine the accounts of the Law Society and the Bar Association, if it is necessary. These measures will ensure that the Law Society and the Bar Association are accountable for their regulatory activities to the profession and to consumers, who ultimately bear the cost of practising fees paid by lawyers. These amendments will commence on 1 July 2004. This will allow enough time for the Law Society and the Bar Association to implement the internal management and accounting changes

necessary to accommodate the formal separation of practising and membership fees. As my comments are germane to the bill and as some of the points that I am about to make have already been made in another place, I seek leave to incorporate the remainder of my second reading speech in *Hansard*.

Leave granted.

The second reform contained in the Bill makes it clear that a contravention of the rules governing advertising is capable of being professional misconduct or unsatisfactory professional conduct. Honourable Members will be aware that the Government moved quickly to ban certain kinds of advertising by solicitors and advertising relating to personal injury services, when the depth of community concern about solicitors' advertising, and its relationship to the public liability crisis, became clear. Similar restrictions are also in force in relation to advertising for workers' compensation services. Amendments made to the Act last year allow the regulations made under the Act to state that certain conduct is capable of being professional misconduct. However, the amendment to the Act included in the Bill before the House sends a powerful message to the profession about the need to scrupulously observe the advertising restrictions. The Bill makes it clear that breaching these rules can be grounds for a disciplinary action against a solicitor or a barrister.

The Bill also promotes multi-disciplinary practice in the legal profession, by removing the power of the Law Society to make practice rules preventing solicitors from practising with other professionals, in multi-disciplinary partnerships. Honourable Members may be aware that the Law Society in fact removed restrictions on the sharing of profits between lawyers and non-lawyers, paving the way for multi-disciplinary practices, in late 1999. While I am not aware of any intention by the Law Society to re-introduce restrictions, the legislative statement of this principle is an endorsement by the Government of solicitors practising in flexible business structures. This reform is a key plank of competition policy reform, and will facilitate competition between solicitors and other service providers.

The Bill requires solicitors' rules and barristers' rules to be publicly exposed before they are made. The solicitors' rules and barristers' rules cover aspects of day to day practice by the profession, including ethical precepts, the conduct of practitioners before the court, dealing with fellow practitioners and clients, and the disclosure of costs. I have a keen interest in ensuring that the Bar Council and the Law Society Council are accountable for the content of the practice rules, and the proposed reform will ensure that the general public has an input into the Rules, before they are made.

Honourable Members may be aware that I have recently commissioned a report on the rules, which was conducted by Michael Chesterman, Emeritus Professor of Law at the University of New South Wales. Professor Chesterman has made a number of recommendations to improve the rules, such as, for example, including a statement of ethics as part of the rules, and making them more accessible to consumers. While the making of rules is a matter for the Law Society Council and the Bar Council respectively, I will take this opportunity to express my support for Professor Chesterman's recommendations and my hope that the Councils will consider them carefully.

In order to promote the development of a national legal services market, the Bill provides that any practitioner who holds a practising certificate from another Australian jurisdiction can practise in New South Wales, as long as he or she meets certain standards set out in the Act. In 1996, the Standing Committee of Attorneys General endorsed a national practising certificate scheme, which allows the solicitors and barristers in each State and Territory to practise in another jurisdiction, if both the jurisdictions concerned have enacted the provisions. The requirement for reciprocity has hampered the development of truly national practice, because some States have yet to pass the necessary amendments. The Bill will remove the reciprocity requirement, so that any Australian solicitor and barrister can practise in New South Wales.

I am pleased to advise Honourable Members that I hope that this amendment will soon become redundant. At the recent meeting of the Standing Committee of Attorneys General, my colleagues in Western Australia and Queensland expressed their intention of enacting the provisions in the near future. This would mean that all jurisdictions have the scheme in place, and I look forward to these reforms as a milestone in the development of national practice.

I now turn to a reform of great importance to consumers of legal services. The Bill requires the Law Society Council and the Bar Association to publicise disciplinary action which is taken against solicitors and barristers, and requires the Commissioner to set up a public register of such action. The establishment of a public register will allow consumers to find out whether the barrister or solicitor they plan to engage has, for example, been subject to disciplinary action taken by the Administrative Decisions Tribunal, following a complaint. The register will be available by internet on the website of the Legal services Commissioner. The register will enhance the transparency and accountability of the disciplinary process and allow consumers to make an informed choice about engaging a solicitor or barrister.

As I have indicated in the case of the other reforms in this Bill, this amendment forms part of a broader examination of the reform of the regulation of the profession. Honourable Members would be aware that I released a discussion paper late last year on the disciplinary scheme in the Act, and I plan to bring forward a comprehensive reform package in the near future. However, I considered that the establishment of a public register of disciplinary matters warranted urgent attention, and sought its inclusion in the Bill before the House.

I commend the Bill.

The Hon. GREG PEARCE [3.17 p.m.]: The Opposition does not oppose the bill. It is part of the move to implement National Competition Policy and is designed to ensure that the New South Wales legal profession is able to practise throughout Australia. I compliment the Parliamentary Secretary on his most edifying comments. Obviously, I agree with many of them. As I was a solicitor before I came to this place, I have experience of some of the issues addressed by this bill. Indeed, I recall in my early years in practice frequent reference to the dingo fence of restrictions which the Queensland legal profession imposed for many

years to ensure no practitioner from any other State was able to practise in Queensland. That did nothing to advance the principles of competition policy or to ensure proper legal practice. I also have the opportunity to be a member of the Law Society Council. I applaud the move to true voluntary membership of the association. That will make that a much more vibrant and reflective body.

The Hon. Jan Burnswoods: Tell us about the campaign office you started in Ryde.

The Hon. GREG PEARCE: The interjection of the Hon. Jan Burnswoods is quite interesting. This bill does a great deal to move forward the practice of law in Australia, and the Opposition commends it.

The DEPUTY-PRESIDENT (The Hon. Tony Kelly): Order! Honourable members will put down the signs.

The Hon. John Jobling: Point of order: Will the Hon. Jan Burnswoods and the Hon. Amanda Fazio remove the signs they are continuing to raise?

The DEPUTY-PRESIDENT: Order! I have asked that the signs be put away.

The Hon. IAN COHEN [3.20 p.m.]: It is with pleasure that I participate in debate on the Legal Profession Amendment (National Competition Policy Review) Bill. The Greens support some aspects of this bill, but certainly will oppose others. Currently, solicitors and barristers pay a practising fee that covers the cost of membership services and the money that is needed for the respective organisation to carry out its regulatory functions. This bill creates a distinction between the two functions. The bill allows solicitors and barristers the option of being voluntary members of the Law Society or the Bar Association. While they will still have to pay a fee so that their organisation can carry out its regulatory functions under the Legal Profession Act, membership fees will be entirely voluntary.

The Greens have a problem with this approach as it amounts to voluntary unionism—a concept that is opposed by the Greens. Compulsory unionism helps unions to become more effective with additional members and more resources. The more members and resources a union has, the more effective it is in negotiating rights and benefits for its members. As a general principle, voluntary unionism is unfair, as often non-members benefit to the same extent as members. For example, the Public Service Association of New South Wales secured a 14 per cent pay rise for its members over four years. Non-members receive this pay increase, despite not having contributed anything whatsoever toward the campaign. With regard to the Law Society and the Bar Association, one aspect of its work which could be construed as a membership function is lobbying.

The Law Society and the Bar Association frequently lobbies the Government, the Opposition and crossbenchers on behalf of its members on issues that affect its members and their clients. Some lobbying is successful and can achieve beneficial results for members and their clients. Why should some members of the profession, who choose not to pay, benefit to the same degree as those who do pay? There are some aspects of the bill that are supported by the Greens—for example, the proposal that requires both the Law Society Council and the Bar Association to publicise disciplinary action that is taken against solicitors and barristers, and requires the Legal Services Commissioner to set up a public register of such action. Lawyers and barristers are extremely expensive. The public should have the right to know what they are paying for. Having said that, I indicate that the Greens do not oppose the bill.

The Hon. Dr PETER WONG [3.23 p.m.]: The Unity party supports the bill, which is part of the National Competition Policy and is designed to open the New South Wales legal profession to all of Australia. Basically, by effectively acknowledging that Australia has moved away from a historically fragmented legal profession, which is a leftover from the old colonial days when each State had a separate legal system, the bill takes us into the twenty-first century. This legislation will allow the States to continue to regulate their legal systems. However, it facilitates the interstate movement of lawyers. The bill provides that any practitioner who holds a practising certificate from another Australian jurisdiction can practise in New South Wales so long as he or she meets certain standards that are set out in the Act. I guess that makes sense, given that increasing competition has the potential of delivering tangible benefits such as choice and, hopefully, reduced legal fees for consumers.

An important consequence of this bill is the separation of the regulatory role and the membership functions of the Law Society and the Bar Association. This is facilitated by the separate imposition of membership and practising fees. The resulting benefits will include more transparent cost structures of the Law

Society and the Bar Association, hopefully leading to savings for consumers. Lawyers can choose to contribute, or not, to the cost of membership activities conducted by their legal professional associations. To further protect consumers, this bill also makes a breach of the newly imposed ban on advertising by solicitors sufficient grounds for disciplinary action against the barrister or solicitor. The bill also promotes multidisciplinary practice in the legal profession by removing the power of the Law Society to make practice rules, which prevent solicitors from practising with other professionals, such as barristers, in multidisciplinary partnerships.

Another welcome consumer protection provision of the bill is the requirement for the Law Society Council and the Bar Association to publicise disciplinary action that is taken against solicitors and barristers through a public register of such action. The public register will allow consumers to find out whether a barrister or solicitor they plan to engage has been the subject of disciplinary action by the Administrative Decisions Tribunal following a consumer's complaint. This bill means greater consumer benefits and protection by providing for greater transparency and competition in the legal market in New South Wales. For these reasons, I will support the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.25 p.m.]: This bill is part of the Government's ongoing process to reform the legal profession which began in 1995 and touched on issues such as advertising, multidisciplinary practices and, generally, more transparency of the business of the legal profession. The bill contains a number of changes to the profession's practices. The amendment that has gained the most focus relates to membership. The National Competition Policy, as it applies to the legal profession, will mean that solicitors and barristers will be free to join a legal association other than the Law Society and the Bar Association. At present, membership of the Law Society for solicitors and the Bar Association for barristers is voluntary, but practising fees include both the cost of regulatory activities and the cost of membership services. One provision of this bill will separate these two cost components.

The Law Society has not opposed this bill and is obviously confident that its present members will continue to support the society. My experience is, however, that when people are given a choice of paying a separate membership fee, two-thirds of the membership disappears. I imagine there will be a number of groups with differing interests who may see the advantage of clubbing together outside the confines of the Law Society and, to a lesser extent, the Bar Association. One could imagine the larger firms, of the likes of Freehill and Allens getting together, and perhaps the Labour Lawyers, women's lawyers and so on. Time will tell. Second, the amendment regarding misconduct charges for contravention of solicitors' advertising rules smacks of censorship of the legal profession. Solicitors were permitted greater freedom to advertise through previous legislation, but with the cutting of workers compensation, and now personal injury claims, the Government seeks to again threaten the profession for having the temerity to inform members of the public of their ever-diminishing rights. The Attorney General in his second reading speech set out the Government's attitude. He stated:

> Honourable members will be aware that the Government moved quickly to ban certain kinds of advertising by solicitors and advertising relating to personal injury services, when the depth of community concern about solicitors' advertising, and its relationship to the public liability crisis, became clear.

It is clear from that statement that the Government had already begun to contemplate gagging debate on the public liability issue before it introduced its Civil Liability Bill. Third, the amendment regarding multidisciplinary practices removes the power of the Law Society to make practice rules to prevent solicitors from practising with other professionals. In 1999 the Law Society removed restrictions on profit sharing between lawyers and non-lawyers. This amendment seeks to ensure that the way is open for multidisciplinary practices. Obviously, the Government does not trust the Law Society. Some concern was expressed in the other place that it was not a good idea to have, say, accountants and lawyers in practice together. The question is whether accountants would have the same grasp of professional ethics as solicitors. That is a matter upon which honourable members must make up their minds.

Solicitors will still be subject to the same code of ethics that applied to them before the introduction of this bill, even if accountants are not, and perhaps in those circumstances there will be a conflict of sorts. However, the availability of a more flexible business structure is in line with National Competition Policy by making that type of mixed profession more competitive nationally and generally in the marketplace. I must confess that I have some misgivings. Fourth, the amendment requiring barristers and solicitors rules to be publicly promulgated before being made is a good move. If only the Government could apply this type of consultative process to some of its own legislation.

Fifth, the amendment to allow legal practitioners from any other jurisdiction to practise in New South Wales is a good one. It will promote a national legal services market, which will give practitioners more work

options. Sixth, the amendment to require the Law Society and the Bar Association to publicise disciplinary action taken against solicitors and barristers is a positive measure. It is proposed that a public register be set up by the Legal Services Commissioner, which will be available on the Legal Services Commissioner's web site. As honourable members would know, I have a bill before the House—the Government (Open Market Competition) Bill—which deals with a similar philosophy, to make government contracts open and accountable.

Overall, the bill may be seen as an attempt to diminish the lobbying power of the legal profession. Over the last five years or so—certainly since I have been a member of this House—the Law Society has been an effective voice for opposition to Government legislation. Indeed, I believe that the legal profession has been a more effective opposition than the Opposition in this Chamber. Its views and suggested amendments to law and order bills especially have been useful to me and many crossbench members. I do not always agree with the Law Society's views but at least they offer an alternative point of view that is well reasoned and well researched. Naturally, at times there is an element of self-interest but that is to be expected from any lobby group. Very often the Law Society acts strongly in the interests of plaintiffs and I believe it should be commended for that. The Law Society is not opposing the legislation and obviously believes that there will be life for it after this bill. We generally support the bill, although we have some misgivings about certain aspects of it.

The Hon. HELEN SHAM-HO [3.31 p.m.]: The Legal Profession Amendment (National Competition Policy Review) Bill initiates further reforms of the legal profession in New South Wales based on the National Competition Policy review. I believe that in general it will further increase the transparency of the legal profession, which is to be supported. The reforms included in this bill are the separation of the functions of the Law Society and the Bar Association, disciplinary action for breach of advertising rules, the encouragement of a national legal services market, and a public register for disciplinary proceedings.

I understand from the Minister's second reading speech that many of the reforms in the bill were recommended by the Attorney General's Department in its report on the National Competition Policy review of the Legal Profession Act 1987. That review was part of the Government's obligations under the Competition Principles Agreement, which was agreed to by the Council of Australian Governments in April 1995. I spoke in this House on the Legal Profession Amendment (Complaints and Discipline) Bill 2000 and the Legal Profession Amendment (Incorporated Legal Practices) Bill 2000, both of which dealt with reforming the legal profession. I supported the Legal Profession Amendment (Complaints and Discipline) Bill as it improved the complaints-handling procedures against solicitors.

However, I strongly opposed the Legal Profession Amendment (Incorporated Legal Practices) Bill. I spoke against that bill as I believed that the incorporation of solicitors firms would result in solicitors being less accountable to clients and the public and being too concerned about shareholders and the financial bottom line. At the time there was opposition to this bill from the New South Wales Bar Association, the Law Institute of Victoria, the New South Wales Legal Reform Group and other Australian groups representing the legal profession. I recall that I opposed that bill even at the second reading stage and the Hon. Peter Breen did the same as we felt so strongly about it. It is seldom that I vote against a bill at the second reading stage.

In my view this bill incorporates aspects of both previous bills. For instance, I do not agree with the separation of the membership and regulatory functions of the Law Society and the Bar Association, and I will discuss that issue later in reference to the Law Society in particular. However, I am supportive of amendments to the Legal Profession Act 1987 in relation to disciplinary issues. The difference between this bill and the Legal Profession Amendment (Incorporated Legal Practices) Bill is that there is no strong opposition to this bill. I have checked with the Law Society and I understand that it is happy with the bill as it stands.

I would now like to discuss the separation of regulatory and membership functions of the Law Society. Honourable members may be aware that until now solicitors and barristers automatically paid for membership of either the Law Society or the Bar Association when they paid for their practising certificate Membership was included in the fee. Most people, many lawyers included, would presume that as the fee was included in the fee for the practising certificate, membership was compulsory. However, as I discovered, membership is in fact voluntary, but due to the interlinking of the regulatory and membership functions that was not clear. The bill will change that. When these changes commence on 1 July 2004 solicitors and barristers will simply pay for their practising certificate and choose optional membership of the Law Society or Bar Association.

I have reservations about the separation of these functions, and although I will not oppose the bill I would like to make clear my reasons for objecting to this. Although I agree with the statement in the Minister's second reading speech that dividing the regulatory and membership role could mean more transparency and may bring savings to consumers, I still believe that being a member of either the Law Society or the Bar Association is important to provide solicitors and barristers with a sense of security and certainty of standards for members.

If legal practitioners decide not to join their professional organisations, the credibility of both organisations may suffer, and I do not believe solicitors or barristers will be better off in the long term. As all honourable members know, the Law Society does considerable work in lobbying the Government, the Opposition, and members of the crossbench. Only last week the President, Kim Cull, and the Director of Policy and Strategy, Shaugn Morgan, spoke to members of the crossbench on the Civil Liability Bill. My concern is that if many solicitors choose not to become members of the Law Society, it will no longer be able to properly represent members. I hope that is not the case. Like any organisation, the strength is in numbers of members. If it does not have sufficient numbers, it cannot be said to represent the legal profession.

The Law Society of New South Wales currently performs two vital functions for solicitors in this State. The society's web site explicitly states that the society has "two primary areas of responsibility. It acts as both licensing and regulating authority and trade union for its members." Historically, the law—like medicine and other professions—has always preferred to be self-regulating, without outside interference. That is clearly why the Law Society has had a dual role in lobbying on behalf of members and also the capacity to discipline them and to maintain professional standards. That is the point I made earlier. If not enough members join the Law Society it cannot be said to represent the legal profession.

As a former solicitor I would like to alert honourable members to the historical background of the Law Society of New South Wales and the importance of membership of the society for all solicitors in this State. According to the Law Society's web site, in 1842 Sir George Gipps, then Governor of New South Wales, stood in this House and stated that solicitors were causing delays in the administration of justice, increasing expense in legal proceedings and claiming excessive remuneration for services. Some honourable members may think that not much has changed since then, but that is a moot point. What is important is that as a result of the Governor's statement six solicitors, with James Norton as leader, joined together as the Sydney Law Library Society and responded to the Governor in the daily newspapers.

More than 40 years later, in 1884, the Incorporated Law Institute of New South Wales was established. Again I refer to the web site of the Law Society of New South Wales. The institute aimed to "consider, originate and promote reform and improvements to the law, to represent generally the views of the profession, and to encourage and promote the study of law". In 1935 the institute was granted powers under the Legal Practitioners Act relating to solicitors' trust accounts, the discipline of solicitors and the issuing of practising certificates. Solicitors who paid the practising fee automatically became members of the institute. In 1960 the institute changed its name to the Law Society of New South Wales, which reflects changes to the role of the society and to the legal profession as a whole. I am sure that those honourable members who studied law will recall that the Law Society of New South Wales set up the Law Foundation, which is now called the Law and Justice Foundation, from the interest earned from solicitors' trust accounts.

Through the Law Foundation the Law Society was able, in 1973, to establish the College of Law, which continues to provide practical legal training for solicitors instead of articles of clerkship. In 1986 I attended the College of Law after I finished my law studies at Macquarie University. In those days everyone who studied law and who wanted to practice law went to the College of Law to complete their practical qualifications. But these days only half of all law graduates finish their studies at the College of Law. When my daughter finished her law studies at the University of Sydney she did not go to the College of Law. Not everyone wants to practise law.

I refer now to disciplinary proceedings against solicitors and barristers. As someone with a legal background I am fully aware of the difficulties that consumers face when making complaints about solicitors or barristers. Members of the public face these difficulties because they are not told about the disciplinary actions that are taken against lawyers. I am pleased that the Law Society Council and the Bar Association now have to publicise disciplinary actions taken against solicitors and barristers. The Legal Services Commissioner has to keep a public register of disciplinary action on the commission's web site. As the Minister said in his second reading speech, this will increase the transparency and accountability of the legal profession. The legal profession has an important task to perform in the public interest.

I know of someone who was recently involved in a huge court case who had difficulty in dealing with his solicitor. The solicitor, who had already been paid, refused to act in the way that was expected of him and, in the process, he jeopardised the court case. If a complaint is made about that solicitor and disciplinary action is taken against him by the Law Society of New South Wales it would help all other consumers of legal services to know that that solicitor was brought into disrepute. Consumers would, therefore, be more wary of hiring such a solicitor. Such solicitors should be held accountable and consumers should be able to lodge complaints against them. I support the Legal Profession Amendment (National Competition Policy Review) Bill and commend it to the House.

Reverend the Hon. FRED NILE [3.43 p.m.]: The Christian Democratic Party supports the Legal Profession Amendment (National Competition Policy Review) Bill, which will amend the Legal Profession Act 1987 in a number of areas relating to National Competition Policy reform. I am particularly supportive of paragraph (b) in the overview of the bill, which states:

> (b) to provide that a contravention of the advertising rules for barristers and solicitors is capable of being professional misconduct or unsatisfactory professional conduct.

The bill will control advertising—if possible, there should be no advertising—by solicitors and members of the legal profession. Such advertising has had a negative impact on workers compensation and civil liability cases. I am pleased that there is provision in the bill for specialist training schemes. As laws are amended and changed, barristers and solicitors should keep up to date with those procedures: they are an essential requirement in our complex society. Paragraph (d) in the overview of the bill states:

> (d) to make it clear that solicitors may practise in multidisciplinary partnerships, despite anything to the contrary in the solicitors rules, and that barristers may also practise in multidisciplinary partnerships, subject to the barristers rules.

I am sure that all honourable members are concerned about multidisciplinary partnerships. Honourable members would be aware that I am not a lawyer, but I have watched a number of programs on television depicting such partnerships. I suppose that I should not judge the legal profession in Australia by the legal practices that are depicted in American television programs such as *LA Law*. However, they appear to convey an element of ruthlessness that is apparent in large corporate legal firms. It would be a pity if that sort of ruthlessness developed in Australia. It might already be apparent in a number of large legal firms in Australia. Paragraph (g) in the overview of the bill states:

> (g) to require the Bar Council, the Law Society Council and the Legal Services Commissioner to publicise disciplinary action taken against barristers and solicitors.

I support that provision in the legislation. I am concerned about recent public revelations about barristers—I do not believe too many solicitors were involved—who deviously and immorally evaded income tax by not lodging tax returns. I am sure many other honourable members feel the same way. Tax bills worth millions of dollars would accumulate over a number of years and those barristers would then declare themselves bankrupt, thus evading their taxation bills. As they had declared themselves bankrupt there was no requirement for them to pay the tax bills. They would continue in their legal practices and go through the same exercise. One or two barristers declared themselves bankrupt on more than one occasion.

When that story was made public, obvious embarrassment was shown by representatives of the Law Society and the Bar Association, but they could not bring themselves to condemn those barristers. I was disappointed that they appeared to be nervous about coming on too strong. They should have been more outspoken and condemned the activities of some of their members. Since then action has been taken in relation to those respective bodies. In the main I have always had good service from solicitors and barristers.

I have had a great deal to do with Ferguson and Carter, solicitors in Gerringong, who have been helpful and efficient. I have also had good service from Beswick, solicitors in Sydney. On one occasion when a barrister represented me in a defamation case I reluctantly agreed to an expensive settlement. I had to pay out tens of thousands of dollars in a case in which I, as a layman, did not believe I was guilty, but I had to accept the legal advice of the barristers who were representing me.

The Hon. Ian Macdonald: Did you have to pay the mardi gras some money?

Reverend the Hon. FRED NILE: No. I had to pay the Chief Censor because I criticised its approval of the *Hail Mary* film. How can a person be found guilty of defamation when dealing with the Chief Censor? I thought those sorts of people were open to criticism from the Left and the Right. I criticised the Chief Censor for allowing the film to be shown. After the settlement the barrister sent me a bill for the following week when the case was to go before the Supreme Court. The case did not go before the Supreme Court but the barrister thought I should still pay his fees for that week.

I was particularly disappointed when I found out he had another important case—and I will not mention any names—which he must have known about some weeks prior to my case being listed. My barrister could have adjusted his calendar to fit in my case. I paid the barrister's fees because I was threatened. I did not know that other avenues were open to me. I was told, "If you do not pay these fees you will go on some sort of

black list and no-one will represent you in the future." I reluctantly paid thousands of dollars for a court case that was never held. With that exception, in the main I have received good service from barristers and solicitors. I support the bill.

The Hon. PETER BREEN [3.50 p.m.]: I support the broad objectives of the Legal Profession Amendment (National Competition Policy Review) Bill. Most importantly, the bill draws a distinction between fees paid to the Law Society and the Bar Association in connection with the exercise of their regulatory functions on the one hand and member services on the other hand. As a consequence of the bill becoming law, membership of the Law Society and the Bar Association will be voluntary, at which time I believe members will leave the Law Society in droves as most solicitors regard it as a waste of space. Most law consumers would express a similar view once they had any experience with the Law Society. Unfortunately for the Law Society, it has never succeeded in representing the interests of both solicitors and law consumers. In my opinion, the Law Society has failed everybody.

The problems with the Law Society to which I have referred—I have also mentioned them in previous debates—centre on two issues: first, the Law Society's professional indemnity insurance company, LawCover Pty Ltd, and, second, the conduct and discipline of the legal profession. Self-regulation simply does not work at the Law Society. I was pleased to read in the Attorney General's second reading speech that he plans to bring forward a comprehensive reform package in that respect in the near future. That reform package is well overdue. The issues paper has been around for some time and on several occasions the Attorney General promised to address the matters dealt with originally by the Law Reform Commission. The Attorney General in effect took it out of the hands of the Law Reform Commission, and many people are waiting anxiously for his final decisions about the various issues.

Allowing the Law Society to look after the conduct and discipline of the legal profession is a nightmare for law consumers. As for LawCover, the Law Society's professional indemnity insurance company, hardly a week goes by without my receiving a complaint about the way it goes into battle against law consumers on behalf of New South Wales solicitors. Reverend the Hon. Fred Nile related a personal incident concerning a barrister and legal costs, and I was reminded of an issue that was brought to my attention only last week when I received a telephone call from Fred and Evelyne Lettice requesting an appointment. I had seen a report about their case on *Stateline* and, although I was not fully acquainted with the facts, I was happy to speak with them about it and to canvass the various issues involved.

In 1994 Mr and Mrs Lettice sued their solicitor for negligence over a conveyancing error. When they bought their 25-acre property at Theresa Park in 1982 their solicitor made a mistake about a right of way and, as a result, part of the property is landlocked. Based on further legal advice, Mr and Mrs Lettice sued in the Supreme Court over the reduced value of the land as a consequence of the solicitor's mistake. As honourable members might expect, Mr and Mrs Lettice won the case. However, the referee's decision was not good enough for LawCover, and the solicitor's professional indemnity insurer appealed the Supreme Court decision to the Court of Appeal. Three judges held on appeal that the solicitor's mistake was discoverable within the six-year period of the statute of limitations, and therefore Mr and Mrs Lettice could not recover their damages from the solicitor.

Reading the judgment of the Court of Appeal in that case left me shaking my head. The logical conclusion of the court's ruling is that every conveyancing transaction undertaken by a solicitor must be checked every six years. After six years, law consumers lose the protection of the solicitors professional indemnity insurance policy. That decision gives a whole new meaning to the expression "time heals all wounds". One wound the decision will not heal, however, is the hole in Mr and Mrs Lettice's pocket. The day after I interviewed Mr and Mrs Lettice they received a creditor's petition from LawCover's solicitors, Mallesons Stephen Jaques, following the issuing of the bankruptcy notice to recover LawCover's costs on the appeal. What were those costs? The creditor's petition claims the sum of $408,420.57. Needless to say, this is an obscene amount of money and, as far as I am concerned, it is a scandal that LawCover and its marble and glass lawyers can take action of this kind under the negligent solicitors insurance policy in respect of a bona fide claim.

In my opinion, Mr and Mrs Lettice were robbed by their solicitor when they bought the land, they were robbed again by the Court of Appeal when it overturned the Supreme Court decision and, finally, they were robbed when LawCover's solicitors issued the creditor's petition for legal costs of Oz Lotto proportions. Alex Mitchell wrote an excellent article, which appeared in last weekend's *Sun-Herald*, about why lawyers do not want to become judges. He quoted the colourful criminal lawyer Chris Murphy as saying that many barristers regard elevation to the judiciary as an escape from unemployment at the bar. My advice to unemployed lawyers is to get a job at Mallesons Stephen Jaques, where members of the legal profession earn thousands of dollars for

standing by a fax machine and terrorising ordinary people who have been dudded by their solicitors. Opposite Alex Mitchell's article appeared a piece by David Brown of the University of New South Wales headed "Silly old duffers' tag taking toll on Bench". In the article Brown referred to:

> … populist denigration of the judiciary as part of an increasingly uncivil politics of law and order.

However, the judiciary is not immune to criticism. Its members are lawmakers and part of the government. If judges fail ordinary people such as Mr and Mrs Lettice they deserve to be criticised.

The next part of the bill refers to advertising by a barrister or solicitor. The conduct of the Law Society has been particularly bad in this area. Members of the Law Society never wanted to advertise their services but the Law Society negotiated with the Greiner Coalition Government to allow solicitors to do so. The resulting advertisements caused an enormous amount of anxiety in the community and brought a great deal of discredit to lawyers. Honourable members will be aware that barristers never advertised; it was only solicitors who decided to go down that track because of a decision made not by them as a group but by their representative body, the Law Society. I commend new laws that limit advertising by solicitors but I question the likely effectiveness of the bill's provisions that deem certain types of advertisements professional misconduct or unsatisfactory professional conduct.

By way of comparison, overcharging is also professional misconduct or unsatisfactory professional conduct and is an enormous problem for law consumers who constantly knock on my door to complain about their solicitors' and barristers' bills. The example that Reverend the Hon. Fred Nile gave a moment ago is no isolated incident: the majority of complaints made to the Legal Services Commissioner involve lawyers' costs. Today I looked through the current edition of the Law Society's publication *Law Society Journal*, which is the magazine distributed to members of the Law Society. I was interested to read an article by Marina Wilson about overcharging, which concludes:

> Where there are allegations of deliberate charging of grossly excessive amounts of costs or deliberate misrepresentations of costs, the Legal Costs Unit of the Law Society advises that the matter be referred as a complaint to the Office of the Legal Services Commissioner.

As I said earlier, the majority of the complaints that the Legal Services Commissioner deals with relate to legal costs. The commissioner is frequently confronted with the question: Does this level of overcharging constitute professional misconduct or unprofessional conduct? The Legal Services Commissioner frequently comes to the answer that it is simply too difficult to argue with the solicitor or barrister about whether their costs are excessive.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

NORTH HEAD QUARANTINE STATION

The Hon. PATRICIA FORSYTHE: My question without notice is to the Minister for Juvenile Justice, representing the Minister for the Environment. Is the Minister aware that the decision to lease and deny public access to the North Head foreshore and Quarantine Station will result in thousands of tourists trampling through the critical breeding habitat of the near extinct fairy penguin? Has the Minister raised concerns about the survival of the fairy penguin colony with the Minister for the Environment and the Premier? If so, what was their response?

The Hon. CARMEL TEBBUTT: The House would be well aware that my colleague the Minister for Planning has set up a commission of inquiry to assist with the assessment of the quarantine station proposal. The inquiry will examine, in an open and transparent manner, all environmental and heritage implications of the proposal. The public hearings of the commission of inquiry have now been completed, and the Minister for Planning is awaiting a report from the commissioner.

The Hon. Patricia Forsythe raised issues with regard to critical habitat declaration. The Threatened Species Conservation Act and the Environmental Planning and Assessment Act set out the requirements for approval of activities within an area identified as critical habitat. Activities that have been approved through an environmental impact statement [EIS] and a species impact statement determination can be undertaken within an area identified as critical habitat.

With regard to the proposal for the use of the quarantine station, both an EIS and a species impact statement have been prepared in full knowledge that a critical declaration was contemplated to assess the range of likely impacts on the little penguin population. The EIS and the species impact statement are presently being assessed through the commission of inquiry and the determining authorities. If the proposal is approved, the activity may proceed and any final critical habitat declaration will not affect the terms of the approval.

While concerns have been expressed about the quarantine station proposal by a range of sources, it may be useful to remind the House that the entire leasing process was commenced by the Coalition when it was last in government by none other than the honourable member for Gosford.

INDUSTRIAL RELATIONS

The Hon. IAN WEST: My question without notice is to the Special Minister of State, and Minister for Industrial Relations. Will the Minister inform the House how the New South Wales industrial relations system promotes industrial co-operation?

The Hon. JOHN DELLA BOSCA: Honourable members would be well aware of the campaign by the Howard Government to take over the industrial relations systems in New South Wales and the other States. The Federal Minister for Workplace Relations, Tony Abbott, has made his plan very clear—although he conceded to journalists in Sydney last month that it was virtually impossible while Labor was in power in New South Wales. He was quite right: it was an accurate observation. A Labor Government in New South Wales will not give away the co-operative system developed over the past 100 years. But Mr Abbott is persistent. His latest attempt works in this way. He will insist that any Federal moneys used for construction projects will require unfettered on-site access by the Office of the Employment Advocate to police the ideological agenda of the Howard-Abbott Government.

If Tony Abbott is truly committed to ensuring good industrial relations and greater productivity outcomes on construction projects, he should carefully examine the success of the best-ever Olympic Games, which were held in Sydney. The Games set the benchmark for industrial co-operation between unions and employers and was underpinned by the making of an award in the New South Wales Industrial Relations Commission. The Government-union partnership that resulted ensured a high priority on safety, a commitment to worker training, no illegal employment practices, and minimal industrial disputes. It showed how industrial relations on this massive project could succeed and contribute to the productivity and success of the overall project.

Let us compare this to the microcosm of Tony Abbott's vision of industrial relations: Victoria, which had its industrial relations laws jettisoned in favour of Federal legislation. The Victorian industrial landscape is now held captive by intractable disputes between parties, with a hamstrung Federal commission unable to effectively resolve their differences. That has led to a phenomenon in which employers are trapped in a system where every action they take meets with an equal counter-reaction by unions. Examples of that phenomenon include the 2½-year dispute at the O'Connor meatworks in Pakenham, which finally ended last year; the Nestle dispute at Echuca, which involved strikes and work bans for three months in 2001; a five-week dispute as part of the campaign 2000 dispute at Feltex carpets, and the creation of militant and anarchic groups such as Workers First.

That might look great in the ideological agenda of Tony Abbott and John Howard, but it is no good for Victorian workers or, ultimately, for Victorian employers. The Carr Government has stated before, and will state again, that it will not hand over its industrial relations powers to Canberra. Any move to a unitary system of industrial relations, whether by a direct method of legislative handover or by this latest backdoor attempt by Tony Abbott, will be firmly resisted by this Government.

POLICE TARGET ACTION GROUPS

The Hon. MICHAEL GALLACHER: My question without notice is to the Minister for Police. What action has the Minister taken following the break-up of the Georges River region Target Action Group [TAG] at Hurstville to ensure that officers are redeployed to local area commands in the Sutherland shire? Can the Minister inform the House why 10 of these TAG officers, who were to be based at Cronulla from 1 July, have now been told to apply for positions elsewhere? Has the Minister investigated concerns that the nearest TAG unit to the Sutherland shire will now be an undermanned squad at Riverwood which currently has insufficient staff to look after its own designated areas?

The Hon. MICHAEL COSTA: The Leader of the Opposition's question is rather premature, because no decisions have been made regarding the TAGs. As a consequence I am not able to respond to allegations about changes that are not in the pipeline. As soon as the decisions are made in relation to TAGs and the allocation of all scarce resources within the police restructure, I will make those details available for the public of New South Wales.

ABORIGINAL RECONCILIATION

The Hon. HELEN SHAM-HO: My question without notice is to the Special Minister of State, representing the Minister for Aboriginal Affairs. Given that Monday 3 June marked the end of National Reconciliation Week and, most importantly, the 10-year anniversary of the High Court's Mabo decision, will the Minister inform the House what action the Government is taking to ensure that the reconciliation process stays alive in New South Wales?

The Hon. JOHN DELLA BOSCA: The Government is very conscious of its obligations in relation to reconciliation and, as the Hon. Helen Sham-Ho would be aware, a number of initiatives were undertaken to mark that commitment. It would most appropriate for me to get a detailed response to the honourable member's question from the Minister for Aboriginal Affairs and provide it to her as soon as possible.

INFORMATION AND COMMUNICATIONS TECHNOLOGY CENTRE OF EXCELLENCE

The Hon. TONY KELLY: My question without notice is to the Treasurer, and Minister for State Development. Will the Minister inform the House about the new Information and Communications Technology Centre of Excellence?

The Hon. MICHAEL EGAN: Last month the New South Wales based National Information and Communications Technology bid was chosen as the preferred candidate to establish and operate Australia's Information and Communications Technology [ICT] Centre of Excellence. The centre will be a world-class research and training institution with significant links with industry, including commercialisation opportunities for Australian information and communications technology [ICT] companies through collaborative research, incubator development, staff exchanges and information sharing. It will build on the status of New South Wales as the ICT capital of Australia and one of the leading ICT hubs in the Asian-Pacific region. The $130 million centre is expected to attract domestic and international investment and inject more than $1 billion into the New South Wales economy over the next 15 years.

The centre will staff up to 660 researchers and students and create more than 500 new PhD places over the next ten years. The New South Wales Government's initial commitment of $20 million will bring jobs as well as investment into the New South Wales economy. In the first year alone 50 jobs will be created at the Redfern site, growing to 400 jobs over the next five years. In the long-term more than 1,000 jobs will be created in information, communication and technology employment. The centre will establish its headquarters at the Australian Technology Park in Redfern and will have additional locations at the University of New South Wales and the Australian National University in Canberra.

The announcement that the Information and Communications Technology Centre of Excellence will be located in Sydney has already had an impact. Leading international information technology companies have been in contact with the New South Wales Government to explore the option of locating on site with the centre of excellence. Through its integrated approach to innovation, education and ICT industry development, the Information and Communications Technology Centre of Excellence will boost the capability of our ICT industry and deliver substantial productivity gains across all sectors of the New South Wales economy. As a result, the centre will contribute to better living standards and higher rate of economic growth for New South Wales and the Australian community as a whole. I welcome the Deputy Leader of the Opposition in the other place. It suggests that there is another leadership coup under way. It does not matter who they want to serve up to us, we will knock them over.

DOG CONTROL

The Hon. JOHN TINGLE: My question without notice is addressed to the Leader of the Government, in the absence of the Minister for Fisheries, representing the Minister for Local Government. Is it a fact that the Minister has decided, on expert veterinary advice, not to ban certain breeds of dog which have been associated with a series of recent savage attacks on children and adults? Is the Minister satisfied with the level of

compliance with the legal requirement to have a dog under restraint at all times while off the owner's premises? If not, and in view of the decision not to ban vicious dogs, will the Minister ask local councils to enforce the leashed dog laws and, if necessary, will he legislate to provide those councils with adequate penalties to encourage compliance with the law, that is, to make people keep their dogs on leads?

The Hon. MICHAEL EGAN: I suppose if I had kept my dog on a leash he would not have run away! I thank the Hon. John Tingle for an important question. I do not know the answer. I will refer it to my colleague in the other place and obtain a response as soon as possible

POLICE RECRUITMENT TELEVISION ADVERTISEMENTS

The Hon. DUNCAN GAY: My question is to the Minister for Police. What has been the total cost of producing and buying large slabs of air time for the new so-called police recruitment television advertisements? Given that the advertisements barely acknowledge the fact that they are for recruiting purposes, should they not instead be labelled as election advertisements, to be paid for and authorised by Sussex Street?

The Hon. MICHAEL COSTA: I take exception to the comments made by the honourable member. I have had nothing but good feedback about the advertisements; they are very good. The police officers I have spoken to congratulate the police force for investing in those advertisements because not only do they depict circumstances that police encounter daily, they also project an image of policing that the community wants to see. That is important for police morale. The police have advised me that the advertisements have been tremendously successful. The police web site has received approximately 33,000 hits since the advertisements commenced. The normal number is 2,000 hits per day. These advertisements have been a tremendous success. They fit in with the recruitment campaign to lift our record police numbers to greater record numbers. Again I thank the Treasurer for his generosity this year. I cannot mention the budget—that is for another time—but I thank the Treasurer for his generosity with a record amount of funding. The police have also advised that since Sunday 9 June, when the advertisements went to air, they have had 2,718 requests for information application packages.

The Hon. Michael Egan: How many?

The Hon. MICHAEL COSTA: They have received 2,718 requests for information packages—a tremendous result from the advertisements. The figures show how successful the campaign has been. One has to understand that the advertisements make it clear how tough policing is but how, at the same time, it can be a rewarding profession. The advertisements tell it as it is and remind the community that our police are heroes. So it is with great pleasure that I congratulate the police force for its advertisements. They work; they are doing what they were designed to do. In relation to the cost, as the commissioner said on the first day of the campaign, $1 million was spent developing the advertisement. I do not have the actual cost of the campaign with me but I am certainly able to get those details and make them public. There are no secrets. The advertisements are aimed at the important process of ensuring that adequate numbers of police come through our training courses. That is what we have now: great numbers. As honourable members know, there were 410 from the last attestation.

In answer to a question asked last week by the Leader of the Opposition I said that there are clear problems in finding places for the next attestation, given the record numbers coming through. I made it clear that we will hold the next attestation in Goulburn. Certainly there is a problem, but it is a problem we want. What a problem: not enough room for attestations because of the record numbers coming through! The police advise me that at the moment there are 1,300 people in training. It is a tremendous achievement to be in a position where we have to look at alternative venues because of the record numbers. The fact that there were 33,000 hits on the police web site after the advertisements shows it is a tremendous campaign. I congratulate everybody who was involved in the production and airing of the advertisements.

YOUTH PARTNERSHIP WITH ARABIC SPEAKING COMMUNITIES

The Hon. RON DYER: My question without notice is addressed to the Minister for Juvenile Justice, Minister Assisting the Premier on Youth and Minister Assisting the Minister for the Environment. Will the Minister inform the House of progress in the youth partnership with Arabic speaking communities?

The Hon. CARMEL TEBBUTT: It is an important initiative, particularly because the initiative came in the first instance from members of the Arabic community who put an idea to the Premier two years ago. Members of the Arabic community were concerned about development opportunities for young people in their

community and the idea was for a partnership with government that would provide targeted support to young people from Arabic speaking backgrounds and their families. This idea has become the youth partnership with Arabic peaking communities. The partnership is overseen by an implementation committee which comprises, importantly, young people as well as community organisations and leaders in government, assisted by my colleague the Minister for Mineral Resources, and Minister for Fisheries.

Backed by Government funding, community leadership and support, the youth partnership is an innovative program that is making a difference. Its aims are to promote the well-being of young people of Arabic descent, to increase parental support and education, to help prevent risk-taking behaviour and to provide better learning opportunities and increased participation in sport, recreation and culture for long-term personal development. The first stage of the project has put in place youth liaison teams whose job it is to meet with young people in places where they gather. This is very much in recognition of the fact that young people often do not actively seek out services, even when they need them. If we are to be effective in linking young people with appropriate services, we need to be in the places where young people are. We need to talk with them in a less formal way and in that way have the opportunity to link them up with services, should that be necessary.

The teams are also working with families, schools, local councils, police, health and other agencies to connect young people to services they need. Two weeks ago in Bankstown I launched the next stage of the Government's youth partnership with Arabic speaking communities, which is the Youth Leadership Development Program. This program is a partnership between the Government, the Institute for Cultural Studies at the University of Western Sydney, young people and community organisations.

The program aims to give at least 75 young people the chance to learn skills and take on a leadership role within their communities and neighbourhoods. It involves workshops and training followed by the design and implementation of a local project picked by the young people in the program. Some of the projects could include web site development, advocacy at local council level for a youth issue or setting up a mentor scheme. Those who complete the program will receive recognition from the University of Western Sydney and they will also have the chance to go on to apply for the Duke of Edinburgh Award Scheme. It is a promising program with large community support.

Iktimal Hage Ali and Mahmoud Dehn are two young people who have been actively involved with the implementation committee. Those young people are to be congratulated on the contribution they are making. Hopefully, the leadership program will ensure that other young people of Arabic speaking background will have the opportunity to improve their ability to be leaders within their own community. The Government's contribution ensures that the program will be relevant and real for those young people who will participate. I look forward to reporting further progress to the House.

POLICE POWERS LEGISLATION PROCLAMATION

The Hon. Dr PETER WONG: My question without notice is directed to the Minister for Police. Is the Minister aware that almost a year ago Parliament passed the Government's Police Powers (Internally Concealed Drugs) Bill at the request of the police to catch dealers who seek to avoid arrest by swallowing the evidence, such as balloons of heroin. However, as of today the police still cannot use these powers because the Government has yet to proclaim this legislation. Will the Minister detail to the House the nature of the delay and advise when the Government intends to proclaim these powers?

The Hon. MICHAEL COSTA: There is no intention not to proclaim the legislation. I am advised that it will be proclaimed on 1 July. Suitable arrangements have been made with health practitioners so that the searches can take place. As honourable members will appreciate, these searches are an unpleasant task and they need to be undertaken by the appropriate people. The cause of the delay has been putting the appropriate health practitioners in place to undertake police searches. As I said, the legislation will be proclaimed on 1 July.

POLICE NUMBERS

The Hon. JAMES SAMIOS: My question without notice is to the Minister for Police. Why has the Minister failed to put monthly statistics relating to police numbers on the New South Wales police web site since March, given his commitment in response to a question I asked on 27 November last that they "will be placed on the web as soon as possible"?

The Hon. MICHAEL COSTA: Police statistics are going onto the web site as soon as practicable.

The Hon. Michael Gallacher: Why are they taking so long?

The Hon. MICHAEL COSTA: If the Leader of the Opposition will relax, he will hear the answer. If it were not for me, the statistics would not be going on the web site in the first place. The Government placed those statistics on the web, or directed the police force to place them on the web. They are important statistics and everybody is entitled to know what the police numbers are.

The Hon. Duncan Gay: You are ashamed of them, aren't you?

The Hon. MICHAEL COSTA: No, I am certainly not ashamed of statistics that will show 410 additional probationary constables from the last attestation. The statistics will show that we have more police officers now than we have had over the past five or six years. We certainly have more police than were around when the Coalition was in government. If those statistics are not on the web site, I will make inquiries and make sure that they are put on. These matters do not come directly under the jurisdiction of my office. They need to be dealt with through police management, and I will speak to police management about them. There is no intention of not putting those statistics on the web site. It is the policy of the Government that they be there.

The Hon. Greg Pearce: Why has it taken six months?

The Hon. MICHAEL COSTA: It certainly has not taken six months. That is ridiculous. The statistics have been on the web. The question asked by the honourable member talked about the statistics for last month.

The Hon. Michael Gallacher: Last month?

The Hon. MICHAEL COSTA: May and April I think he is talking about.

The Hon. Michael Gallacher: No, the last three months.

The Hon. MICHAEL COSTA: No, that is not right. They have been on the web. We will put the statistics on. There is no intention of not having them there. I would be proud to have them there because they will show that under our Government this State has record numbers of police. We are proud of that.

CAR HOONS

The Hon. HENRY TSANG: My question without notice is to the Minister for Police. What are the latest government measures to target car hoons?

The Hon. MICHAEL COSTA: The problem of car hoons was first brought to my attention by the honourable member for Kogarah and the honourable member for Rockdale. They are both outstanding members of Parliament who have been fighting for their community for a number of months to ensure that the problem of car hoons is dealt with. If only the Liberal Party could find some outstanding members similar to them, it might be in a position to make an impact on the politics of this State. Unfortunately for the Liberal Party, people of this quality will not go anywhere near it.

I was startled to hear from residents and shopkeepers in the Brighton-le-Sands area about the problems associated with car hoons. I made a commitment to discuss the matter with the Minister for Transport to see if we could resolve the problems in the interest of the community. Anybody who has been there will have seen how these kids—and they are not only kids—with expensive and dangerous toys cause a great many anti-social problems for local residents, with tyres screeching and music blaring from very loud speakers. Some of these people illegally modify their cars by taking out the back seats and putting in large speakers which play music very loudly.

The Hon. Duncan Gay: With coloured shirts?

The Hon. MICHAEL COSTA: It is a blue shirt. The Government has developed a sensible response to the car hoon problem. From 1 July car hoons will be hit where it hurts—on their licence. My colleague the Minister for Transport will introduce a demerit points system for car hooning and will double many fines. Some of the penalties are the loss of two demerit points for excessive vehicle noise. Causing offensive noise from a vehicle sound system will mean the loss of another two demerit points. Someone who starts or drives a vehicle causing excessive noise or smoke will lose two demerit points. The best way to deal with car hoons is to target them where it hurts, that is, their licences.

Police tell me that many of these drivers spend $5,000 for a set of alloy wheels—or even $25,000 on a paint job. For repeat offenders, the current fines are not effective. That is why we are linking these offences to the demerit point system. People who continue this sort of behaviour will lose their licences. They will be off the road completely. Added to that, a pool of Environment Protection Authority officers will join with police and the Roads and Traffic Authority in blitzes on hoon hotspots. The more the chance of getting caught, the more chance there is they will get the message.

These changes build on the Government's illegal drag racing laws introduced in 1996. That legislation gave police the power to issue defect notices in relation to illegally modified vehicles and to impound any vehicle involved in street racing. So far this year 135 cars have been confiscated and more than 400 charges have been laid. The Government, NSW Police and the community will not tolerate car hoons. I commend the honourable member for Kogarah and the St George Local Area Command for their work in developing these initial proposals. As I said, we have two terrific members of Parliament in that area who put a lot of effort into meeting the concerns—

The Hon. Michael Gallacher: Unlike the rest.

The Hon. MICHAEL COSTA: No, the rest of them are good too, as you will see. These two members of Parliament have put a lot of effort into dealing with the problem of car hoons. It is because of their efforts that the new demerit points system will come into effect from 1 July. I congratulate both members on their efforts.

OLNEY STATE FOREST THREATENED SPECIES PROTECTION

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question is to the Minister Assisting the Minister for the Environment. Is the Minister aware of alleged breaches by Forestry NSW of the integrated forestry operations approvals regulations regarding threatened species in compartment 35 of Olney State Forest? What is the result of the inspection by the threatened species unit of the National Parks and Wildlife Service on 5 June this year? Will prosecutions result from this inspection?

The Hon. CARMEL TEBBUTT: The question raises a number of detailed issues to which I cannot respond today, but I will refer the question to the Minister in the other place and get a response as soon as possible.

JUANITA NIELSEN DISAPPEARANCE INVESTIGATION

The Hon. JENNIFER GARDINER: My question is directed to the Minister for Police. Given his stated admiration for the New South Wales Crime Commission, which he referred to as a fantastic body, will he undertake to establish what that agency will do to solve one of the State's highest profile unsolved crimes: the Juanita Nielsen case? If the Crime Commission tells the Minister that it cannot solve that crime or that it will not try to, will he undertake to advise the House of the reason for such an assessment?

The Hon. MICHAEL COSTA: That question clearly involves an operational matter. I will take advice before I comment on the matter.

HUNTER FILM INDUSTRY

The Hon. AMANDA FAZIO: Will the Treasurer, and Minister for State Development provide the House with details of the latest achievements of the New South Wales film industry in the Hunter?

The Hon. MICHAEL EGAN: Like the earlier question of the Hon. Tony Kelly, the question asked by the Hon. Amanda Fazio is a good one. I am pleased to inform the House of a recent report by the Newcastle and Hunter Film and Television Office which shows that almost $1.1 million has been injected into the Hunter economy by visiting film crews over the past 18 months.

The Hon. Jennifer Gardiner: They are making a police commercial.

The Hon. MICHAEL EGAN: We make a lot of television commercials in Australia. They are not just television commercials for Australia; they are for countries all around the world. We are an attractive location for many reasons. We have an excellent film industry in New South Wales and our costs are cheaper compared

with those of other locations around the world. I am also told that we have another attraction: the quality of the light in New South Wales. Since July 2000 564 film and television production people, including units from Japan and the United States of America, have visited the Hunter. In fact, the region has recently attracted its first Indian Bollywood feature film. Bollywood is the Indian equivalent to Hollywood.

The Newcastle and Hunter Film and Television Office report increased interest in the Hunter as an on-site location. Many directors and location managers are particularly impressed with the diversity of landscapes and architecture, which offer a good range of potential film and television locations. Our fabulous locations are clearly catching on: New South Wales recently took out three major awards at the annual locations trade expo in America, beating leading film-making countries such as the United Kingdom, Canada, Japan and the United States. The Hunter enjoys a diverse industrial infrastructure and skills base to accommodate the needs of film and television production. The film industry can use and complement existing local industries and create new employment industries, providing a boost to the local economy.

The Hon. Duncan Gay: Where are they going to get the Morris Oxfords?

The Hon. MICHAEL EGAN: My family used to have a Morris Oxford. Film-related employment opportunities involve everything from film technicians, actors and extras to accommodation, restaurants, caterers and retail outlets as well as tradespeople, animal trainers, and portaloo and generator hire suppliers. It is pleasing to report that the Hunter community has developed a thriving local film culture in recent years. Newcastle is home to the popular Shoot Out Film Festival, where every year makers of short films converge on the city to make a film in 24 hours. The region offers a variety of film and video tuition, provided by the WEA Hunter, Newcastle TAFE and the University of Newcastle. Many talented local actors are represented by a variety of talent agencies, which provide casting assistance for visiting production crews. Feature films made in the Hunter include *Bootmen*, *15 Amore* and *Escape from Absalom*. I look forward to hearing of many more feature films and television productions taking advantage of the great resources and facilities the Hunter has to offer.

M5 EAST EXHAUST STACK HEALTH IMPACTS

The Hon. IAN COHEN: My question is directed to the Treasurer, representing the Minister for Health. Has the Minister received any notification of complaints about adverse health impacts from the M5 East stack or tunnel? Is the Minister aware that several previously healthy adults who live close to the top of the stack have developed asthma since the tunnel opened? Will the Minister provide details of complaints received? Has any action been undertaken by the health department in response to complaints?

The Hon. Charlie Lynn: Good question.

The Hon. MICHAEL EGAN: I do not know whether it is a good question. I live about 30 metres as the crow flies from the Eastern Distributor stack.

The Hon. Patricia Forsythe: But you are always sick.

The Hon. MICHAEL EGAN: Since the Eastern Distributor has been in full operation my health has improved immeasurably. This is the first year in a number of years that I have not been sick at budget time. I am not suggesting that is a result of the Eastern Distributor stack. The Hon. Charlie Lynn said that it was a good question. I am not sure that it is, but I will refer it to my colleague the Minister for Roads and we will ascertain whether it is a good question. As soon as the Minister has had the opportunity to consider the honourable member's question I am sure he will give the House a detailed and satisfactory reply.

OPERATION FLORIDA LISTENING DEVICES WARRANT

The Hon. GREG PEARCE: Has the Minister for Police to date apologised to two civilians who were erroneously named on a listening devices warrant, along with 112 police officers, in relation to Operation Florida? If not, will he now give an undertaking to the House that he will apologise to the two civilians in question?

The Hon. Amanda Fazio: Point of order: I am not sure whether the Hon. Greg Pearce should be in this Chamber or asking a question because in one of the weekend newspapers he was referred to as the Liberal member for Ryde.

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

The Hon. MICHAEL COSTA: As all members of the House should be aware, as I hope the honourable Dennis Denuto, that there was an inquiry into this matter. I do not intend to add any further to that inquiry.

POLICE MINISTER'S ADVISORY COUNCIL

The Hon. JOHN HATZISTERGOS: My question is to the Minister for Police. What is the latest information on the Police Minister's Advisory Council [PMAC]?

The Hon. MICHAEL COSTA: It is a very good question and it is appropriate that I report to the House on the Police Minister's Advisory Council, a council that was established in early December to strengthen the partnership between police and the community. The council's priorities are to consider community views on the effectiveness of local policing and crime prevention strategies; to develop plans for more effective local crime prevention; to assess the adequacy of police powers to prevent and solve crimes; to consider community views regarding front-line police deployment and efficiency; and to consider opportunities for integrating new technologies into policing.

The Hon. John Ryan: That was an initiative of the former Commissioner of Police, Peter Ryan.

The Hon. MICHAEL COSTA: Given the Hon. John Ryan's interjection, I make the point that this is not a replacement for the former police board. It has no role to play in operational issues, and has no executive or statutory powers over New South Wales police. The council gives the community a voice in policing, and it helps me to do my job as Minister. I want to hear the views of regional and rural New South Wales, Western Sydney and the business community, and that is reflected in the membership of the council. The council comprises the State Chamber of Commerce Chief Executive, Margy Osmond; the Mayor of Barraba, Shirley Close; the Vietnamese Women's Association President and domestic violence expert, April Pham; former Assistant Police Commissioner Geoff Schuberg; the Commissioner of Police, Ken Moroney; the Director-General of the Police Ministry, Les Tree; and the President of the Police Association, Ian Ball.

The Hon. Michael Egan: Is anyone from Treasury on it?

The Hon. MICHAEL COSTA: No. The council would not have Treasury representatives on it. They just tell you what you cannot do. I acknowledge the work of the council so far. The council is proving to be an extremely productive forum. Over the past six months the council has played a role in developing initiatives to help front-line police and the communities they serve. The initiatives include the supplementary policing trial; the review of police recruitment, retention and training; the police accountability community teams; the New South Wales police restructure; the trial of infringement notices for minor, non-violent offences; cutting police paperwork; police promotions; long-term sick; and a task force to develop better strategies to combat fraud.

The council will continue to meet at locations across the State to hear the views of local communities on policing. The first country PMAC meeting was held at Armidale on 17 May. The PMAC members discussed local policing issues with community representatives at the Armidale City Council chambers. It was a valuable experience, which will be repeated when the council meets at locations in metropolitan and rural New South Wales—including Cabramatta, Dubbo, Nowra and Kogarah—later this year. I look forward to reporting on the progress of the council to date. It is an important body and its meetings are fruitful. We have discussions with local community representatives, as we did in Armidale. Those views are taken very seriously, and we respond to the community when it raises issues of concern.

Not only has the council been involved in some of the important decisions that have been made in relation to extending police powers and police visibility. It is also very much involved in the restructure of the police force. The council has had briefings from the Police Ministry in relation to the restructure. If any issues arise as the restructure is implemented people will have an opportunity to talk to representatives of the PMAC and have those matters dealt with through the Police Minister's Advisory Council. I congratulate all those who are involved, and I thank them for their efforts to date.

GREY NURSE SHARK PROTECTION

The Hon. ALAN CORBETT: My question is addressed to the Treasurer, representing the Minister for Fisheries. Is it a fact that the Minister set up a grey nurse shark draft recovery team to advise him on the

measures that needed to be taken to save the grey nurse shark from extinction? If so, what is the Minister's response to claims that he has now totally ignored the unanimous recommendations of the team by not incorporating its suggestions in the May draft recovery plan for the grey nurse shark?

The Hon. MICHAEL EGAN: I had better be careful with my response because, speaking as a layman, I would be quite happy for all grey nurse sharks to be gotten rid of, at least where I swim. However, if grey nurse sharks are back in favour, I will find out from my colleague the Minister for Fisheries what he is doing to ensure that they recover from whatever illness or misfortune they have been suffering.

[*Interruption*]

I swim all over the place. Although some of our waterways, such as Sydney Harbour, have been improved, I am not sure that I would swim in Sydney Harbour in an unprotected location. I once would have.

The Hon. Don Harwin: There are six sharks.

The Hon. MICHAEL EGAN: There are six grey nurse sharks. Has the Hon. Don Harwin met them all? As long as there are none at Bondi Beach, I will be happy.

The Hon. Dr Brian Pezzutti: They all have names, they are so precious.

The Hon. MICHAEL EGAN: I am not on speaking terms with them so I will have to take the Hon. Dr Brian Pezzutti's claim at face value.

The Hon. John Ryan: They wouldn't tolerate the competition.

The Hon. MICHAEL EGAN: No, they probably would not. I will refer the Hon. Alan Corbett's question to the Minister on his return.

ELECTRICITY INDUSTRY CONTESTABILITY

The Hon. CHARLIE LYNN: My question is directed to the Treasurer, and Vice President of the Executive Council. What is the Government's response to comments by the Treasurer's colleague the Queensland Treasurer, Terry Mackenroth, who has said that the results of the switch to full retail contestability in New South Wales and Victoria have been "dismal" and "hardly impressive"?

The Hon. MICHAEL EGAN: I am not surprised that Mr Mackenroth would say that because the Queensland Government has decided not to introduce full retail contestability for electricity consumers and I suppose for that reason it would be looking for any excuse to justify its decision.

The Hon. Duncan Gay: You gave it to them, didn't you?

The Hon. MICHAEL EGAN: No, Queensland does not have it. It does not have full retail contestability.

The Hon. Duncan Gay: But yours was hardly a success.

The Hon. MICHAEL EGAN: No. The papers to which I am not allowed to refer show that Treasury is suggesting that by the end of the calendar year there will be something like 100,000 contract customers in New South Wales. I would not place much store on that prediction because, in any event, that is not the measure of success as I see it. The success of full retail contestability is that every electricity retailer in New South Wales, whether it is publicly owned or privately owned, knows that every one of its customers can walk away if they are not satisfied with the service they are getting. So the fact that customers are not changing is, to some extent, a reflection of satisfaction. The fact that retailers know that customers can choose at any time makes them pull up their socks and improve their performance. By the way, Terry Mackenroth is a pretty good bloke but that is not to say that he and I do not have major disagreements. And I will be telling the House about some of them on appropriate occasions.

BUILDING AND CONSTRUCTION INDUSTRY LONG SERVICE PAYMENTS CORPORATION

The Hon. PETER PRIMROSE: My question without notice is directed to the Special Minister of State, and Minister for Industrial Relations. Will the Minister inform the House what actions are being taken by the Building and Construction Industry Long Service Payments Corporation to ensure the availability of community language information to workers?

The Hon. JOHN DELLA BOSCA: I am pleased to advise the House that industry feedback continues to confirm that the portable long service scheme is clearly providing worthwhile long service benefits to workers in an industry that remains largely itinerant and has a large proportion of workers who speak a language other than English. The scheme administered by the corporation protects the long service leave of workers in the building and construction industry—a significant component of work entitlements notwithstanding the economic situation of the industry or the financial viability of employers wherever they are across the State. The 2000-01 year was another year of record payments: $34.7 million was paid to workers from the scheme managed by the corporation. A similar level will be achieved in 2001-02. The provision of such a worthwhile scheme is not a static process, and the corporation is continuously reviewing its operations to improve the quality and range of services available to its clients.

In 2001 the corporation completed the translation of the extensive information for worker members on the scheme into 14 community languages. The translated material is included on the corporation's web site and can be readily printed off, making the information easily accessible to workers and employers. The corporation can also provide the information in printed form directly to customers should they request it. The initiative is being promoted widely throughout the industry by the distribution of a site poster that, in particular, highlights the new community language material. The corporation maintains a statewide telephone help line service for the cost of a local call from a fixed phone anywhere in the State. The service can access telephone interpreter facilities at no charge to the caller. These actions are significant in the process of protecting workers entitlements in a key industry.

M5 EAST EXHAUST STACK

The Hon. MALCOLM JONES: My question is to the Treasurer, representing the Minister for Roads. Between February and April this year why were extraction fans for the M5 stack turned off completely or why were their operating hours not in conformity with agreed operating times?

The Hon. MICHAEL EGAN: Where was that?

The Hon. Richard Jones: On the M5 stack.

The Hon. MICHAEL EGAN: I do not know.

The Hon. John Jobling: Why not?

The Hon. MICHAEL EGAN: No-one told me. If I had been told that that question was going to be asked I would have found out the answer. I will find out and come back to the House with the answer.

ENERGYAUSTRALIA POWERTEL INVESTMENT

The Hon. JOHN JOBLING: My question without notice is to the Treasurer, and Vice-President of the Executive Council. What has been the total cost to New South Wales taxpayers of EnergyAustralia's investment in the PowerTel consortium? Given that EnergyAustralia announced a significant write-down of its PowerTel investment to the amount of $24.9 million, will the Treasurer guarantee that that State-owned corporation will not waste any more taxpayers' dollars in that venture?

The Hon. MICHAEL EGAN: I am aware that the investment in PowerTel has been written down. Honourable members would be aware that PowerTel is a venture by an American company and a consortium of Australian electricity retailers which, from memory, consists of EnergyAustralia, Energex in Queensland and one from Victoria. It is true that PowerTel has not thus far performed as well as one might have hoped when it was established, but it is not alone there. A number of other companies, including AGL, invested in a telco company called Dingo Blue.

The Hon. John Jobling: How much more is EnergyAustralia investing?

The Hon. MICHAEL EGAN: As far as I know it is planning no further investment in PowerTel.

HITACHI LTD REGIONAL HEADQUARTERS

The Hon. JAN BURNSWOODS: My question without notice is to the Treasurer, and Minister for State Development. What recent success has Sydney had in securing hubs of major information technology companies?

The Hon. MICHAEL EGAN: One of Japan's largest companies, Hitachi Ltd, has established its regional headquarters in the New South Wales information technology [IT] precinct at North Ryde. My colleagues the Premier and the Hon. John Watkins recently opened a new $1.8 million site, which will house 90 highly skilled IT professionals. The site was selected over its sister operations in New Zealand and other Australian States. Thousands of international companies are now operating out of New South Wales, the engine room of the Australian economy. The new headquarters marks a first for Hitachi Ltd as two major divisions of the company, Hitachi Australia and Hitachi Data Systems, move into the one regional head office.

The new offices will also house a new state-of-the-art interactive customer solutions centre. Hitachi will be able to run technical hands-on workshops for existing customers and bring staff up to date with the latest breaking technologies. The centre will service clients and staff across Australia and New Zealand. Hitachi's operations will build on the State's information and communications sector, which employs more than 100,000 people and generates more than $26 billion annually. The combined revenue of the Hitachi group of companies in Australia is well in excess of $500 million annually and the group provides employment to more than 500 Australians across the country.

The Hon. John Ryan: They will pay more payroll tax.

The Hon. MICHAEL EGAN: Hitachi would have paid a lot more payroll tax if it had come here when the Coalition was in office. At one stage it would have paid 8 per cent, which is a full 33½ per cent more than it pays now. What is more, if it had come here seven years ago it would have paid debits duty on every occasion that it had a transaction on its bank account or on its credit card—every single time. Thank heavens for a Labor Government! That is one of the reasons why companies such as Hitachi come to New South Wales. We have reduced taxes by almost 11 per cent since we came to office. That silly man over there always highlights the problems of the former Government. He cannot get away from his shame about the performance of his high-taxing, high-spending, high-deficit colleagues. The head office of Hitachi Ltd operates out of Hitachi City in Japan. The opening of the head office represented another win for New South Wales. I congratulate Hitachi Ltd on its decision and on the confidence it has shown in Sydney and in New South Wales.

M5 EAST EXHAUST STACK HEALTH IMPACTS

The Hon. RICHARD JONES: I ask the Treasurer to ask the Minister for Roads to ensure that the Roads and Traffic Authority conducts an urgent health study in conjunction with the Department of Health to verify the rash of health complaints from people living near the M5 East stack. Will the Minister act immediately to have that stack filtered to protect both residents and motorists from pollution?

The Hon. MICHAEL EGAN: I refer the honourable member to my answer to a previous question today.

MOOREBANK POLICING

The Hon. JOHN RYAN: My question is to the Minister for Police. What action has the Government taken to return Moorebank police station to its former status as a fully operational patrol command, particularly given the concerns of local residents over rising crime in that area?

The Hon. MICHAEL COSTA: As the honourable member is very well aware, Commissioner Moroney is currently reviewing police station operating hours. I suggest that if the honourable member has a submission to make to the review that he make that submission. The reality is that the Carr Government has done more than any other government to increase policing resources and to ensure that the community has the police force it wants: that is, a front-line, visible, active police force. The only people who are opposed to this are Ned Flanders' mob. They call visible policing a knee-jerk stunt.

They have a problem with our police being back on the streets, which is where the community of New South Wales wants them. I can assure the Hon. John Ryan that we will not be deflected by silly questions in this

House and silly statements in public from giving the community what it wants, that is, front-line visible policing. I know that is so because I talk to the community. This policy is overwhelmingly supported by the community, which wants a 24-hour police presence on the streets. That is what the Government, in conjunction with the new Commissioner of Police, will deliver for the community.

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

GENETICALLY MODIFIED ORGANISMS

The Hon. JOHN DELLA BOSCA: On 7 May the Hon. Alan Corbett asked a question concerning genetically modified organisms. My colleague the Minister for Agriculture has provided the following response:

1. Some farmers, particularly those who produce canola, are concerned about possible contamination of their crops by pollen from genetically engineered varieties.

2. The Commonwealth Gene Technology Regulator is responsible for determining the conditions under which genetically modified crops can be grown, including the distance between crops.

CONTAMINATED INDUSTRIAL WASTE FERTILISER USE

The Hon. JOHN DELLA BOSCA: On 8 May Ms Lee Rhiannon asked a question concerning contaminated industrial waste fertiliser use. My colleague the Minister for Agriculture has provided the following response.

(1) The *Sydney Morning Herald* article did not identify any 'toxic fertilisers' being used, which could create any risks to consumers, farmers or retailers.

(2) The fertiliser and waste industries are not currently self-regulated in NSW, but are comprehensively regulated under the Fertilisers Act 1985 administered by NSW Agriculture and the Protection of the Environment Operations Act 1997, administered by the Environment Protection Authority, to ensure toxic residues are not added to food crops.

(3) The *Sydney Morning Herald* article has not identified any cases, and I am unaware of any cases, of fertilisers containing residues of any substance above legally allowable limits being sold or used in NSW.

Questions without notice concluded.

LEGAL PROFESSION AMENDMENT (NATIONAL COMPETITION POLICY REVIEW) BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. PETER BREEN [5.02 p.m.]: Earlier I referred to the enforceability of the measure in the bill that provides that certain lawyers' advertisements are capable of constituting professional misconduct or unsatisfactory professional conduct. I wanted to make the point that similar provisions about overcharging are basically unenforceable because the Legal Services Commissioner is in no position to take on the marble and glass law firms. One recent case that comes to mind is that of Wee Waa farmer Alan Baker, who was overcharged $150,000 by the law firm Phillips Fox. Mr Baker complained to the Legal Services Commissioner, who found a hundred reasons why he should not prosecute Phillips Fox. However, the only valid reasons were his lack of resources and the complexity of the law so far as it relates to professional misconduct and unsatisfactory professional conduct.

I fear that the provision in this bill that relates to advertising will suffer the same fate as the rules about overcharging, that is, lawyers in sole practice and small suburban firms will be easily intimidated by the Legal Services Commissioner, while the marble and glass lawyers will act with impunity. In any event what constitutes an advertisement? That question could be argued until the cows come home—but only if the lawyer enjoys the backing of one of the large firms. So we have two different set of rules: one for sole practitioners and solicitors in small firms and the other for lawyers in the larger firms. The remaining provisions of the bill represent positive developments for the legal profession in New South Wales. Under the bill accredited training schemes get a guernsey. One curious provision allows the Attorney General to direct the Law Society and the Bar Association to recognise particular schemes. One can only conjecture what such a scheme might be. Perhaps a scheme involving parliamentary drafting would be a good scheme to recommend to the Law Society and the Bar Association.

Multidisciplinary partnerships receive further statutory recognition, and I commend those provisions of the bill. Movement of lawyers between States and Territories is also recognised under the bill. Amendments to Bar Council and Law Society council rules must be made available for public discussion. Finally, disciplinary action taken against barristers and solicitors must be available for public scrutiny. In a sense that information is already available on the Internet. The decisions of the Administrative Decision Tribunal are certainly available on the Internet. I suppose it could be argued that people looking to inquire about particular barristers or solicitors might not know where to look, so the provisions of the bill putting the obligation on the Law Society and the Bar Association to make the information available for the public are commendable.

I do have one reservation, however, about the last amendment regarding public notices and the availability of information about disciplinary proceedings. I would have preferred to consider that provision in the context of the Attorney General's review of the conduct and discipline of the legal profession. That review is long overdue and I sincerely hope that the provision to make disciplinary action public is not the only change to the conduct and discipline of the legal profession between now and the next election. I suppose time will tell. In the meantime I commend the bill to the House.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.05 p.m.], in reply: I thank honourable members for their contributions to the debate on this important legislation. The Legal Profession Amendment (National Competition Policy Review) Bill will achieve a number of important reforms that will help consumers who deal with lawyers and improve the governance of the legal profession. By making membership of the Law Society and the Bar Association truly voluntary, the bill will remove the need for lawyers to pay for services they do not use. The cost savings can be passed on to consumers. Ensuring that breaches of advertising rules can be professional misconduct or unsatisfactory professional conduct will protect the public from false or misleading advertising by lawyers. The bill will ensure that solicitors cannot be prevented from practising in multidisciplinary practices, ensuring that the public has a wide choice of legal services. The bill will allow any practitioner who can practise in Australia and who holds a practising certificate to come to New South Wales and provide legal services.

Finally, and most importantly for consumers of legal services, the bill will require the Legal Services Commissioner to establish on his web site a public register of disciplinary action taken against barristers or solicitors. For example, people will be able to see whether a lawyer they are planning to engage has been found guilty of misconduct in the Administrative Decisions Tribunal. Consumers have a right to know about the disciplinary record of practitioners before they engage them. The bill is an important step forward in promoting the transparent regulation of the legal profession and cementing the position of New South Wales as the leading jurisdiction in legal profession regulation.

The Hon. Ian Cohen indicated that the Greens oppose voluntary membership of the Law Society. Voluntary membership will lower the costs of legal practice, and the Government expects these costs to be passed on to consumers. However, the Government expects that most practitioners will elect to join the Law Society or Bar Association because if they do not they will not receive membership benefits, such as access to the Law Society Journal, the members' dining room, social functions and precedent database. The Law Society supports the reforms and will work closely with the Government to ensure that essential licensing functions are included in the mandatory practicing fee, and that the membership fee represents only the cost of those activities that are not essential to legal practice.

The Hon. Peter Breen made a number of statements about the dealings of the Lettice family with LawCover. I will take this opportunity to put on record the action the Attorney General has taken in response to that case. The Lettice family bought land that was had a defect in its title, a defect which the family's solicitor failed to notice. The Lettices discovered the defect when they decided to subdivide the land. They made a claim against the solicitor on the ground of his negligence. However, the Court of Appeal found that their action was barred by the statute of limitations. The conveyance had taken place in 1982. The Lettice family discovered the negligence only in 1993 or 1994. They could not reasonably have discovered the defect earlier. There was no question but that the solicitor was negligent.

However, the Limitation Act provides that these types of actions must commence within six years of the date the action arises. The Court of Appeal found that this date was the date of the conveyance, not the date that the Lettice family became aware of their misfortune. This result meant that LawCover did not have to pay the Lettice family compensation for their solicitor's negligence. It also allowed LawCover to pursue the Lettice family for its costs.

The Attorney General has encouraged LawCover to resolve this matter. However, he cannot intervene in the decision-making process of LawCover, which is an independent company. However, the Attorney can fix

the law so that other people do not have the same misfortune. In March the Attorney General's Department released an issues brief proposing amendments to the Limitation Act to specifically address the problems faced by the Lettice family. Submissions closed on 1 June. The department is considering the submissions, and will act quickly to resolve the issue. The Hon. Peter Breen also asked whether the provisions in the bill for a public register of practitioners who have been subject to disciplinary action will be the only reform to disciplinary provisions. I can assure the House that the Attorney General will bring forward comprehensive reforms to the disciplinary scheme once the review is complete. The public register provisions were included in the bill only because the Government considered that this issue needed to be dealt with urgently. I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

COMPENSATION COURT REPEAL BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.11 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is necessitated by the amendments to the Workers Compensation legislation that were made by the Government last year.

A key element of those changes was the establishment of the Workers Compensation Commission, which commenced operation in relation to all disputes arising from new workers compensation claims from January 2002.

Since 1 April 2002 there have been no disputes filed with the Compensation Court arising from workers compensation claims.

As at 1 April 2002 the Compensation Court had a pending caseload of 30,894 matters. It is estimated that it will take the Court until December 2003 to work through its current pending caseload.

Accordingly, this Bill repeals the *Compensation Court Act 1984* and disestablishes the Compensation Court with effect from the end of 31 December 2003.

All Judges of the Compensation Court who are with the Court at that date will be appointed, by operation of the legislation, as Judges of the District Court with their current seniority and status preserved. As the members of the Dust Diseases Tribunal are also Judges of the Compensation Court, these provisions of the legislation will also operate to transfer their appointments to the District Court. The Dust Diseases Tribunal will be otherwise unaffected.

The Bill also makes provision for the present Chief Judge of the Compensation Court, the Hon. Justice Campbell, to stay with the Court as an Acting Judge, if he so chooses, from the date of his compulsory retirement at age 72 until the end of 31 December 2003. I am very grateful to the Chief Judge for his willingness to stay on with the Court and to help it through this difficult transition time.

If there are pending matters in the Compensation Court on the repeal date, the Bill provides that any pending workers compensation matters (other than those relating to coalminers) will be transferred to the Workers Compensation Commission, where they will be dealt with in accordance with the new procedures applicable in the Commission. However a regulation making power is included to enable alternative arrangements to be made in this regard.

Any other pending matters in the Court on the repeal date, including compensation matters relating to coalminers, will be transferred to the District Court and dealt with in accordance with currently applicable procedures.

The Compensation Court presently has jurisdiction in relation to a number of miscellaneous matters that are not the province of the Workers Compensation Commission. Jurisdiction in relation to all of these residual areas, including workers compensation claims for coalminers, will be transferred to the District Court.

The position in relation to disputes arising in relation to coalminers has been the subject of discussions between WorkCover, the Minerals Council and the Construction Forestry Mining and Energy Union. There are a number of issues of mutual concern to the CFMEU and the Minerals Council in relation to:

- the provision of funding by Coal Mines Insurance to the District Court;
- administrative matters relating to the handling of issues within the District Court; and, finally
- whether strategies will be put in place to ensure that there is not a loss of expertise in relation to coal mining matters.

WorkCover, the Attorney General's Department and the District Court will continue discussions with these bodies over the next eighteen months to ensure that these concerns are addressed. These discussions will include consideration of alternative options to the transfer of matters to the District Court, although it is recognised that the District Court option will proceed if an alternative option satisfactory to all the parties cannot be agreed.

Another aspect of the Compensation Court's jurisdiction includes "hurt on duty" applications under the *Police Regulation (Superannuation) Act* 1906. While the bill also provides for the transfer of these matters to the District Court, WorkCover will be contacting the NSW Police Association to discuss alternative options.

The Schedule to the Bill makes consequential amendments to other legislation that contains references to the Compensation Court.

The demise of the Compensation Court is an inevitable outcome of the restructuring and reform of the WorkCover scheme.

I would very much like to thank the Chief Judge, the Judges, the Commissioners, the Registrar and in particular all the staff of the Compensation Court for the fantastic efforts they have made to accommodate the legislative changes that have been made. They have coped with an unprecedented number of filings in the last few months, and I have every faith that this dedicated band of people will continue to rise to the challenge of change over the coming months.

The Registrar of the Compensation Court will be working very hard with the Attorney General's Department to find new and challenging opportunities for staff as the time for closure of the Court approaches.

I commend the Bill to the House.

The Hon. JAMES SAMIOS [5.11 p.m.]: The objects of the Compensation Court Repeal Bill, as stated in the overview, are to repeal the Compensation Court Act 1984 and abolish the Compensation Court, to provide for the appointment of existing Compensation Court judges and acting judges as judges or acting judges of the District Court, to transfer the jurisdiction of the Compensation Court to the Workers Compensation Commission or the District Court, and to make consequential amendments to various Acts. Due to changes made to workers compensation in 2001 and the establishment of the Workers Compensation Commission, no disputes have been filed with the Compensation Court arising from workers compensation claims since April last year.

Judges of the Compensation Court will be made judges of the District Court with the same seniority, and any pending workers compensation matters will be transferred to the Workers Compensation Commission, except for those relating to coalminers. One aspect of the jurisdiction of the Compensation Court is the "hurt on duty" provision under the Police Regulation (Superannuation) Act. The bill provides for the transfer of these matters to the District Court. Judges of the Compensation Court will now be made judges of the District Court even though they do not have the same experience or expertise as judges of that court. That is a matter of some concern. The Opposition does not oppose the legislation but notes, as background to the presentation of the legislation, the failure of the Government's compensation scheme.

Ms LEE RHIANNON [5.14 p.m.]: The bill revisits the workers compensation debacle that has been such a low point of the second term of the Labor Government. As we can see, the bill closes down the Compensation Court and transfers its judges to the District Court as a consequence of changes to the workers compensation system made last year in this place. The Greens did not support those changes, and we do not support this bill. It completed the dirty work done last year to the employed people of New South Wales. It robs them of an independent jurisdiction to which they can turn for resolution of dispute. The Greens opposed changes to the workers compensation system because those changes devastated the rights of injured workers and were based on a manufactured debt crisis that we maintain could have been handled more rationally.

At the time my colleague the Hon. Ian Cohen and I were particularly critical of the transfer of compensation matters from the court to the commission. We were deeply suspicious of the level of independence of the commission from WorkCover and the Minister. We noted the impartiality with which the Compensation Court had dealt with disputes and the enormous respect the court had earned over almost two decades. We moved amendments to give the commission a more judicial nature. As we know, many of these amendments were unsuccessful. The Greens put on record at the time that we were particularly disturbed by the appointment of Justice Terry Sheahan as the president of the commission. Prior to his appointment, Justice Sheahan conducted an inquiry for the New South Wales Government into the common law aspect of workers compensation.

The report under his name formed the basis for the hatchet job on common law in subsequent legislation. The Greens doubt that many workers will now have much confidence in Justice Sheahan's appointment. It is interesting to note that Justice Sheahan, together with the Chief Judge of the Court of Appeal, is the highest-paid judge in New South Wales. This payment is no doubt the cause of much speculation amongst the legal profession as to why a former Labor Minister and the author of a report destroying common law rights of injured workers goes on to become the highest-paid judge in the State. Of particular concern to the Greens is the abolition of the separate Dust Diseases Tribunal, which will now become part of the District Court.

The tribunal does an excellent job in securing justice for workers with work-related lung diseases. Its relocation to the District Court will place that excellent work at risk. I ask the Minister to make clear in his reply how the special nature of that work will be supported when it is moved over to the District Court. The Greens remain committed to the rights of injured workers to secure adequate compensation. Unfortunately, the bill is another insult to the employed people of New South Wales who, once injured, have little chance of fair or reasonable compensation. The bill will make it even harder for them to find such compensation. The Greens oppose the bill.

Reverend the Hon. FRED NILE [5.18 p.m.]: The Christian Democratic Party supports the Compensation Court Repeal Bill as part of the ongoing reform of the workers compensation arrangements in this State. The bill will repeal the Compensation Court Act 1984 to disestablish the Compensation Court, provide for existing Compensation Court judges and acting judges to be transferred to the District Court and transfer the jurisdiction of the Compensation Court to the Workers Compensation Commission or the District Court. The bill is necessary because of amendments to the workers compensation legislation made last year. The Workers Compensation Commission commenced operations in January 2002 and no new compensation matters have been filed with the Compensation Court since April 2002.

Because it has a current caseload, the court will not be disestablished by this bill until 31 December 2003. Last week General Purpose Standing Committee No. 1 received at a hearing of its inquiry into workers compensation a submission by Mr Justice Sheahan on the operation of the Workers Compensation Commission, which is still being established but is already involved in some matters. I was quite impressed by his outlining of the operations of the commission, its employment of arbitrators and so on. It seems that all required structures are in place. It seemed to me that the system involves a more direct role for trade unions to assist injured workers. Under the new arrangement provided for under the legislation I believe the unions will have a greater role to play. I hope that the commission, as it expands its operations and receives matters, will have greater support from both employers and unions. I also hope that injured workers will feel they are being treated fairly by the commission, so that in the long run justice will be done. We support the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.21 p.m.]: This bill is the end result of the Tory Carr Labor Government's draconian workers compensation reforms. The bill will disestablish the Compensation Court, which is a respected and revered institution that has been in existence since the 1920s. That court was once known as the Workers Compensation Court and later just as the Compensation Court. The objects of the Act governing the court were to ensure that workers who were injured at work were fairly and justly compensated. The Government has abandoned workers and motor accident victims, just as last week it abandoned people who were injured in other circumstances through no fault of their own. The Government has not thought up a comprehensive alternative regime; it has merely cut back the benefits. This proposal regarding the Compensation Commission does much the same. Mr Carr's regime will soon be marching backwards to deny compensation to those unfairly dismissed from their employment. So from now on, people had best be careful not to lose their jobs, have a motor vehicle accident or get injured at work, because if they do they will live the rest of their lives on the human scrap heap.

Since it began operating in January 2002 the Workers Compensation Commission has been dealing with matters formerly dealt with by the Compensation Court. No new matters have been lodged with the Compensation Court since 1 April 2002. The court has been given until 31 December 2003 to complete the matters it has before it. Any workers compensation matters still not resolved at the court repeal date will be transferred to the Workers Compensation Commission, where they will be dealt with under the new procedures applicable in the commission. Matters have been dealt with very slowly. After nearly four years in this place, I am still seeing patients who were injured before I became a member of this House yet have still not had their matters resolved. It seems quite unfair to put people who were injured under the rules for the Compensation Court under the jurisdiction of the commission.

There is provision in the bill to transfer matters involving coalminers to the District Court, so surely it would be logical to do the same with other workers compensation matters. There should not be two sets of rules operating at the same time—one for coalminers and one for everybody else. As with the Civil Liability Bill, this bill will create two classes of compensation applicants. Under the Civil Liability Bill, which was debated in this Chamber last week, those who sue the government get a better deal than people who sue anybody else. That ensured that the victims of the Glenbrook train accident were not seen publicly to get the bad deal that everybody else will get as a result of that bill. The effect of the bill now before the House is to transfer coalminers' compensation matters to the District Court and the cases of all other injured workers to the Workers Compensation Commission. The Construction, Forestry, Mining and Engineering Union is to be congratulated. It has done its job and achieved a good deal for its coalminer members. But other workers have been left in the lurch.

I will move an amendment to address that inequity. I hope the Government and the Opposition will see the merit in transferring all matters to the District Court and providing an even playing field. Compensation issues arise from poor management of claims, and the Government has to do more than capitulate to vested interests by removing the rights of little people. As I said when speaking to the Civil Liability Bill last week, the whole issue needs to be better thought through and better mechanisms need to be worked out. If Australia is to be the clever country into the future, each profession must give value for the dollar. It must give the best result in public health and public policy terms for the least capital input. Sadly, the fact that New South Wales has a plentiful supply of lawyers has not resulted in the stakeholders getting together to achieve public policy objectives of balancing risk, injury and compensation.

Basically, we are adopting a third-world approach to these types of issues. We still have the legal machinery, but we are being niggardly about payouts. We should be doing better. If we are to be competitive in this world, we should not be racing to the bottom in regard to payouts; we should devise more sophisticated systems to prevent accidents. As everyone knows, Australia does not do well in accident prevention. Again, I believe that is attributable in part to poor management of claims, and poor prevention measures resulting from claims due to the lack of a feedback loop. We must do better than enact legislation that reduces benefits. This bill, which marks the demise of the Compensation Court, is a milestone along the wrong road. The Government and the professions as a whole ought to find better ways of compensating people, so that we may turn our attention to accident prevention. Those injured under the old rules ought to be dealt with under the old rules.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.27 p.m.], in reply: I thank honourable members for their contributions. It is proposed that matters making up the residual jurisdiction, upon transfer to the District Court, will be listed before former judges of the Compensation Court. To the fullest extent possible, matters that are part heard will be listed before the same judge and treated as continuing in the new forum. The bill makes provision for that continuity. The residual jurisdiction proposed to be transferred to the District Court covers, first, disputed coalminers' claims—as the changes to the workers compensation scheme do not apply to coalminers' claims; second, review and appellate jurisdiction under a range of statutes including the Police Regulation (Superannuation) Act 1906, the Workers Compensation (Dust Diseases) Act 1942 and the Sporting Injuries Insurance Act 1978; and, third, jurisdiction in relation to other statutes such as the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987.

As at 1 July 2002 the Compensation Court had just over 30,000 existing claims remaining to be resolved. It is anticipated that the Compensation Court will be able to dispose of the bulk of those matters by the end of 2003. Any claims still pending at the end of 2003 will be transferred to the commission or the District Court, as appropriate. A regulation-making power has been included so that the exact distribution can be fine-tuned closer to the time, when the extent of any residual workload can be better assessed. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 6 agreed to.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.31 p.m.], by leave: I move Democrats amendment Nos 1, 2 and 3 in globo:

No. 1 Pages 4 and 5, clause 7 (1)-(3), line 12 on page 4 to line 3 on page 5. Omit all words on those lines. Insert instead:

7 Proceedings pending before the Compensation Court

(1) Proceedings instituted in the Compensation Court and pending in that Court immediately before the repeal of the Compensation Court Act are transferred to the District Court.

(2) Regulations under section 11 may contain provisions of a savings or transitional nature consequent on the transfer of proceedings by this section.

(3) The following provisions have effect when proceedings are transferred to the District Court by this section:

(a) the Compensation Court ceases to have jurisdiction in respect of the proceedings,

(b) the proceedings are taken to be proceedings instituted in the District Court and are to be heard and determined accordingly,

(c) an order or award of the Compensation Court in the proceedings is taken to be an order or award of the District Court.

No. 2 Page 5, clause 7 (7), lines 20-23. Omit all words on those lines.

No. 3 Page 1, Long title. Omit "the Workers Compensation Commission or".

Basically, the amendments deal with cases that are before the Compensation Court and have not been dealt with when the Compensation Court is abolished. The amendments merely transfer those cases to the District Court rather than to the Workers Compensation Commission so that they can be dealt with under the same rules as those applying in the Compensation Court. I believe that is the more equitable approach; it was adopted for the coalminers, and I put it to the Committee that this is the equitable way to deal with the matter and ensure that there is one class of person under the rules. That seems to me to be a fair way of dealing with these matters. There may be reasons why some cases are delayed longer than others so that they may not be heard within the time frame. There would not be very many of those cases. I think a great case can be made for the preservation of equity in justice in New South Wales.

Reverend the Hon. FRED NILE [5.32 p.m.]: I seek clarification on the impact of the amendment No. 3, which seeks to remove from the long title the words "Workers Compensation Commission or". The long title would then read, " … to transfer the Compensation Court's jurisdiction to the District Court". The amendment appears to create a problem because the bill establishes the commission. How can the commission be eliminated from the title?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.33 p.m.]: I believe that the commission is already established.

Reverend the Hon. Fred Nile: No. This bill establishes it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No. The commission is already established as an entity, and the jurisdiction of the Compensation Court is now finite in the sense that it is not taking on more cases. Removal of the words "Workers Compensation Commission" for that jurisdiction means that the cases default to the District Court. I believe that the drafting is correct.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.33 p.m.]: The Government opposes amendments Nos 1, 2 and 3. The bill provides for workers compensation disputes that remain with the Compensation Court on 1 January 2004 to be transferred to the commission. The amendment moved on behalf of the Australian Democrats proposes instead to transfer these matters to the District Court. This is not supported by the Government and cannot be. The bill as drafted provides flexibility so that regulations may be made it if it is found that some matter should go to the District Court—for example, where a judgment is about to be delivered. However, it is difficult to see why all matters should be treated the same. In cases where few steps have been taken, the dispute can, and should, be resolved in the commission. That approach will provide a simple and fast system for resolving disputes.

The extent of the pending caseload in the Compensation Court as at 1 January 2004 cannot be known until much closer to that time. It is hoped and anticipated that the Compensation Court will continue its outstanding work of succeeding in disposing of all pending matters by the deadline. If it fails in that endeavour, the bill as currently drafted will let the Government manage the situation effectively and flexibly at that time.

The Hon. JAMES SAMIOS [5.34 p.m.]: The Opposition notes that amendments Nos 1, 2 and 3 were delivered at 2.56 p.m., rather late in the day, and certainly the Opposition did not have them until after 5.00 p.m. In the circumstances, and after listening to the Government spokesman's comments on the proposed amendments, the Opposition takes the view that it will not support the amendments.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.35 p.m.]: To provide more certainty I wish to clarify a matter that was raised by the Greens. A separate list will be maintained in the District Court consisting of those matters formerly dealt with in the Compensation Court and transferred to the District Court. They will be heard by the judges who formerly sat in the Compensation Court.

Amendments negatived.

Clauses 7 to 12 agreed to.

Schedule 1 agreed to.

Title agreed to.

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

CRIMES AMENDMENT (BUSHFIRES) BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.38 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.

All Members will recall the bushfires that ravaged the State in December and January.

The men and women who fought on the frontline: volunteer and professional firefighters; Police; those involved in planning, communications, in catering and in welfare worked together in unforgiving weather conditions.

Many risked their lives.

They were defending thousands of homes and in thousands of cases, they succeeded.

They were stunningly successful.

The volunteer forces that come together at times of significant natural disaster are almost unique to Australia, and in New South Wales we have achieved the highest standards.

The Bill before the House today seeks to emphasise the gravity of the danger that bushfires represent by enacting a specific offence of causing a bushfire.

In introducing this Bill the Government is not seeking to fill a gap in the criminal law, but rather it seeks to emphasise society's abhorrence and condemnation of the deliberate lighting of bushfires by making specific provision against it.

In so doing the Government is further implementing reforms to the criminal law arising out of the Model Criminal Code. The Code has been drawn up by the Model Criminal Code Officers Committee of the Standing Committee of Attorney's General. It is a committee in which this Government has been heavily involved since its inception.

This new offence is yet another example of this Government taking the best options for law reform and adapting them to suit the needs of this State. The Government has previously enacted legislation based on the Model Criminal Code in the areas of computer offences, sabotage, contamination of goods and sexual servitude.

The Bill proposes to insert into the *Crimes Act* 1900 a new offence of causing a bushfire. This offence will be committed if a person intentionally causes a fire and either intends or is reckless as to the spread of that fire to vegetation on any public land or land belonging to another.

This offence is not intended to be a catch-all arson offence. The *Crimes Act* 1900 already contains more than adequate offences of malicious damage to property. Currently, s195(b) of the *Crimes Act* 1900 provides for up to 10 years imprisonment for maliciously damaging property by the use of fire or explosives. A person who recklessly damages property in this way acts maliciously. Under section 196(b) the penalty rises to 14 years if the property is damaged with the intention of injuring a person, and under section 198 a maximum penalty of 25 years imprisonment can be applied to a person who maliciously damages property with the intention of endangering life.

I now turn to the provisions of the Bill. Schedule 1 inserts a new Subdivision 5 entitled 'Bushfires' and this new offence is bushfire specific and it is targeted to catch those persons who intentionally set fire to our bush. Proposed Section 203E(1) establishes the new offence which requires that the person be reckless as to the spread of fire to vegetation. Of course, if buildings or other property are damaged as a result of the spread of such a fire such damage can be taken into account in sentencing. Where appropriate, additional charges may be laid relating to the additional damage.

The penalty for the new offence of causing a bushfire will sit in the middle of the existing range of property damage penalties. The danger to life and property that a bushfire represents in a continent as dry as Australia means that the offence should be seen to be a special aggravated form of damage to property. The Bill therefore will enact a maximum penalty of 14 years imprisonment, placing the offence on a par with the offence of damaging property with the intention of injuring a person.

It should be noted that for the purposes of consistency the Government has chosen to depart from the Model Criminal Code's suggested 15 year maximum penalty to maintain consistency in the application of 14 year imprisonment penalties in the *Crimes Act* 1900.

However, this offence will not require that the person deliberately intends to cause any damage to property or that the person intends the fire to spread. The emphasis in this offence is on recklessness as to the spread of fire to vegetation. The speed at which fire can spread and the need to take immediate preventative action means that it is appropriate for persons to be expected to only light fires in circumstances where they are in a position to control the fire and to prevent it spreading to vegetation.

Recklessness remains a common law term in NSW. It has a number of meanings in different contexts. In this context recklessness will mean that the defendant was aware when intentionally causing a fire that there was a possibility that the fire could spread to vegetation on any public land or land belonging to another in a way that was out of their control.

The definition of the term spread contained in the proposed Section 203D has a special meaning. It is important to note that the offence contemplates recklessness as to the spread of the fire, not any thought as to the extent of damage that such a fire might cause. The aim is to prohibit conduct that creates an unacceptable risk of damage. The offence is therefore aimed at preventing conduct that *might* lead to damage, rather than waiting until the damage has occurred. The offence sends a strong message to those who light fires to be extremely careful. If a fire is carelessly lit, it may be an offence even if the fire is by good luck extinguished before damage occurs.

Accordingly the phrase "spread of the fire" is given a special meaning in the proposed definition in section 203D.

The way in which the fire might spread must be such that it is beyond the capacity of the person who causes it to then extinguish it. Thus it is not an offence under this provision to light a fire with the intention of letting it spread across land provided the person who lit the fire has taken sufficient precautions to ensure that the fire is at all times controlled. Whilst a person in such circumstances may not be guilty of the proposed bushfire offence the person may still be guilty of the lesser offence of malicious damage to property.

The offence also requires that the person causing the fire was aware of the possibility of the fire spreading to property owned by another, regardless of whether that be public or private land. This means that fires lit by landowners on their own land will not fall within the scope of the offence unless there is the possibility that the fire could spread beyond the boundary of their land. On the other hand, a firebug lighting an uncontrolled fire on public land such as a National Park will instantly fall within the scope of the offence.

In some circumstances lighting a fire which may possibly spread to another's land or to public land is clearly for a justified reason such as when firefighters carry out bush fire fighting or hazard reduction operations. In recognition of this, a specific exemption from prosecution for such persons is created by proposed Section 203E(3). This will act to avoid any impression that the new offence might in any way hamper the ability of fire fighters and emergency workers to make quick decisions in emergency situations.

It is important to note that this bushfire offence recognises the fact that innocent people can be caught in dangerous situations involving bushfires. The definition of causing a fire in proposed Section 203D includes failing to contain a fire. However two key exceptions are provided that significantly qualify this position. Under the proposed definition a person does not cause a fire by failing to contain a fire which was lit by another person. Further, a person does not cause a fire by failing to contain a fire which is beyond their control.

This second exception directly envisages a situation such as where a person safely lights a fire such as a barbeque and for some unforeseeable reason the fire becomes beyond the person's control. An example might be an unexpected and freakish sudden strong gale of wind that instantly causes the treetops surrounding the barbeque area to catch fire and that fire is instantly uncontrollable. This person is not guilty of lighting a bushfire and cannot themselves be reasonably expected to put themselves at risk in attempting to contain the fire.

The offence created by this Bill is aimed not to comprehensively re-write the law as it relates to bushfires. Significantly, it will work as a direct complement to the offence currently contained in section 100(1) of the *Rural Fires Act* 1997 being an offence of strict liability. That offence relates to the setting of fires, without lawful authority, and carries a maximum penalty of 5 years imprisonment or a $110,000 fine. The new section 203E(4) of the *Crimes Act* 1900 as created by this Bill provides that the offence under the *Rural Fires Act* section 100(1) is available as an alternative verdict in a prosecution under the new offence. This will facilitate the complete integration of the new offence into the existing fire related offence structure whilst maintaining the Government's strong position in condemning any person found lighting a dangerous fire of any kind.

The toll exacted against our community due to the recent Christmas and New Year Bushfires will not be forgotten quickly by those directly affected or by those who watched daily their neighbours and friends suffering so greatly. It is inevitable that bushfires will occur in such a hot and dry place as New South Wales—the mission of this Government is take every step possible to prevent their occurrence, their force, their regularity and most importantly their ability to be lit deliberately. This Bill directly confronts, in a preventative manner, the deliberate lighting of bushfires by imposing a heavy penalty on such illegal acts.

I strongly commend the Bill to the House.

The Hon. JAMES SAMIOS [5.19 p.m.]: The overview of the bill states:

The object of this Bill is to amend the Crimes Act 1900 to provide for an offence of causing a bushfire. The proposed offence carries a maximum penalty of imprisonment for 14 years.

The offence covers persons who intentionally cause a fire and intend the fire to spread, or are reckless as to the spread of the fire, beyond their control to vegetation on public land or land belonging to another.

A person is not guilty of the offence if the person is a firefighter, or is acting under the direction of a firefighter, and caused the fire in the course of bushfire fighting or hazard reduction operations.

The proposed offence is generally based on the offence contained in the Model Criminal Code recommended by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General. In light of other relevant offences and penalties in New South Wales, the proposed offence carries a slightly lower maximum penalty (imprisonment for 14 years rather than 15 years) and provides an express defence for firefighters.

The proposed offence applies to a person who causes a fire, which is defined to include lighting a fire or maintaining a fire, and also failing to contain a fire (except where the fire was lit by another person or the fire is beyond the control of the person who lit the fire).

> This will cover the situation where, for example, a person lights a fire that at that time is not a risk of spreading beyond the person's capacity to extinguish it, but at a later time the person fails to contain the fire when there is a risk that it will so spread.
>
> The proposed offence complements the existing offence relating to the setting of fires, without lawful authority, in section 100 (1) of the Rural Fires Act 1997. That existing offence carries a maximum penalty of 5 years imprisonment or 1,000 penalty units (currently $110,000).
>
> Proposed section 203E (4) of the Crimes Act 1900 provides that the offence under section 100 (1) of the Rural Fires Act 1997 is available as an alternative verdict in a prosecution under the proposed new offence.

In essence, the bill proposes to create a new offence under the Crimes Act 1900 of causing a bushfire, with a maximum penalty of 14 years imprisonment. The bill specifically excludes firefighters and those acting under their direction. By way of background, the proposed offence, which largely follows the recommendation of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, follows the horrific Christmas bushfires last summer in New South Wales and the revelation that many fires were deliberately lit. The bill creates a new property offence determined on the basis of recklessness. To the keep the penalty for causing a bushfire in line with other analogous offences, the maximum penalty has been set at 14 years—one year less than the recommendation by the Model Criminal Code.

It also provides for the offence to be dealt with summarily unless the prosecutor or accused elects to have the matter heard on indictment or by a jury. The bill discourages arsonists by creating a new serious offence with a significant penalty. There is already provision under the Crimes Act for deliberately lighting fires and/or causing damage to persons or property. This legislation could easily be seen as another Government stunt to disguise the fact that few people are charged under criminal offences compared to those charged under the Rural Fires Act 1997—offences carrying significantly lesser penalties.

The provision for the presumption that the offence will be dealt with summarily unless the prosecutor or accused requests otherwise will result in convicted persons receiving a significantly reduced penalty, such as a fine, a bond or a community service order. The Opposition does not oppose the bill but it highlights the fact that this legislation is another example of a Government that is happy to impose high penalties at random without giving consideration as to whether they will be imposed by the courts—a significant point. Obviously, there is a need for the courts to relate to the reality of provisions which provide for higher penalties.

Ms LEE RHIANNON [5.44 p.m.]: Legislation pops up in odd ways in this place, but it is clear that this legislation flowed as a result of media comment. The Premier was desperate and we were going through terrible times with the bushfires. However, resorting to such simplistic solutions will not make people safer, it will not protect homes and it will not protect the environment. This legislation is a ham-fisted attempt to address a complex and difficult problem. How do we stop people from lighting unwanted fires? This legislation does not give us any answers.

After listening to the comments of the Hon. James Samios in his contribution to debate on this bill I gained the impression that the Opposition shares some of these concerns. Faced with this problem of lighting fires, and the public's understandable desire to see some action, the Government has responded in the only way it knows how—to beat them up, lock them up, put more laws through the Parliament and to talk tough. It makes us wonder whether there is any problem or any issue that the Carr Government would not try to fix with new offences and longer sentences. The fundamental problem with this bill—and the basis of the Greens' concerns—is that the Government has presented no evidence at all to show that these offences and these long sentences will do anything to prevent unwanted bushfires.

Honourable members should keep in mind that the issue about which we are talking is unwanted bushfires—that terrible disaster that is experienced in Australia. However, as our population spreads it is a problem with which we must deal. The Greens concur that unwanted bushfires are often disastrous events. We, as a society, must look at ways of checking the damage that is occasioned to people, their homes and the wider environment. Although fire is an essential component of Australian bush it should be regulated on a scientific basis to ensure that ecological values are maintained and that people's lives are not put at risk.

Unwanted, random bushfires can cause tremendous damage, not only to life and property but also to our natural ecosystems if the fires occur more often than the bush can cope with. We must, however, take a hard look at the reasons why people start these fires. That is the way in which this Government should have responded as opposed to its knee-jerk response in introducing this legislation. Often the cause is a psychological illness that leads to a compulsive obsession with fire. Sadly, some of the people who light fires are firefighters. When those cases go before the courts there appears to be some deep angst that drove those people to do that.

On occasions the cause of unwanted fires might be the same cause for other problems such as vandalism and petty crime. I refer in this instance to alienation and social exclusion. Those problems will not be sorted out by tough laws. There will not be fewer fires because of those laws. Whatever causes an individual to light bushfires, there is no evidence that I have seen that indicates that the law and order approach will bring results. Again I ask the Minister in reply to offer any evidence that shows there have been results from that sort of approach. As I said earlier, it is a simplistic and knee-jerk solution to a complex and difficult problem. What is more, it may be an unjust solution.

If a person lights fires because he or she has a psychological illness, is it really appropriate to lock up that person for 14 years? Will it really result in fewer fires? I put it to all honourable members that it will not. Surely the focus should be on getting those people some help, therapy, counselling or other services that will help them work through their problems while ensuring that they are not in a position to light further fires. If a person commits an offence due to a psychological illness, surely a compassionate approach is called for. The public should be protected from the impacts of further offences, but that does not preclude a compassionate approach that deals with the offender as primarily an unwell person and not a criminal. It would be far more productive if the Government put its efforts into community education campaigns to reduce accidental fires, or into more resources, training and research to prevent the roughly 20 per cent of unwanted fires that start life as deliberate back-burn or other types of wanted fires.

The impact of this bill will be to distract from the other factors at play regarding unwanted bushfires. That is why I suggest to honourable members that this bill will not have the intended result of reducing the number of bushfires. We must deal with this problem in a much more sophisticated and diverse manner than this bill allows. The Government has failed to adequately regulate development in fire-prone areas. Developers must be compelled to design fire-friendly developments, with roads placed between houses and bushland. For too many years we have allowed dangerous ridge-top developments in bushland areas. This is a comprehensive failure of urban planning: a victory for developer greed over safety, and an abdication of responsibility on the part of government.

I take this opportunity to place on record the Greens' position on hazard reduction burning. Contrary to the mistaken view that seems to be held by many—our opponents, some of whom are in this place, like to fan this misconception—the Greens are not opposed to hazard reduction burning, and never have been. In fact, the Greens recognise that deliberate burning is essential to maintaining the ecological values of most Australian ecosystems. These ecosystems evolved over thousands of years of Aboriginal burning and now depend upon various types of fires for their survival. For example, many plant species cannot regenerate without a fire trigger.

It is essential that hazard reduction burning is conducted in line with scientific research about the optimum frequency and intensity of fire needed to satisfy the twin goals of maintaining ecological values and reducing the fuel load. This goal is achievable but must be approached in a scientific manner rather than with the attitude, "We're going to burn the bush today." All too often in Australia a cowboy mentality has reigned, with hazard reduction conducted in an unscientific and haphazard manner that has damaged the environment and placed human life at risk. Let us not forget that hazard reduction burning that is conducted in an unscientific manner can place people's lives at risk.

Sadly, we will never be able to prevent all unwanted bushfires in this country. Whether lit accidentally or deliberately, unwanted fires will inevitably occur. All that we as a society can sensibly do is to prepare properly for this outcome, carefully plan our at-risk urban areas, put in place preventative measures to intercept potential offenders, and commit to a scientifically rigorous approach to hazard reduction. That comprehensive approach is not rocket science; it is basic commonsense. However, we are not seeing that from the Government, which is taking advantage of a tragic situation in order to beat the law-and-order drum. More and more people are starting to realise that this is not the way to deal with complex problems such as this.

We owe a tremendous debt of gratitude to our firefighters, both paid and volunteer, who bear the brunt of unwanted fires. Although backed by many other volunteers, those firefighters put their lives on the line on many occasions. The tragedy is that this bill will not help them in any way. Like so much that this Carr Government does, it is all spin and hype and very little substance. It is a sorry day when a government takes that approach to an issue as important as bushfire control.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.53 p.m.]: For 22 days between 24 December 2001 and 16 January 2002 bushfires ravaged this State. Some fires were started accidentally and others were

deliberately lit. The bushfires resulted in the devastation of approximately 753,000 hectares of bush and grasslands and 331 homes and buildings. The bravery and selfless action of the New South Wales Fire Brigades, the Rural Fire Service, the State Emergency Service and the Police Service during the crisis cannot be ignored. On behalf of the Australian Democrats, I congratulate them on a job well done. We certainly hope that fires such as that never occur again.

The Crimes Amendment (Bushfires) Bill is part of the Carr Government's response to the recent bushfires. As I said before, some of the bushfires were deliberately lit by pyromaniacs and now the Carr Government is applying its tough law and order agenda in this area as well. However, the Government has produced not one skerrick of evidence that this approach will deter people from deliberately lighting fires. That should be the object of this legislation. Will this bill work? There is not one skerrick of evidence that it will, and I think it is totally irresponsible for a government to introduce legislation without any proof that it will achieve the desired outcome. The only thing of which we can be certain is that someone who is gaoled for 14 years for deliberately lighting a bushfire will not light another one during his or her period of incarceration.

If the rationale for this bill is that, in the absence of a solution, it will prevent people from reoffending by incarcerating them for 14 years, the Government should say so. As the Minister said in his second reading speech, the Government is seeking not to fill a gap in the criminal law but to emphasise society's abhorrence and condemnation of the deliberate lighting of bushfires by introducing specific measures to deal with that activity. In seeking to emphasise society's abhorrence and condemnation of such acts, the bill is a form of revenge: it translates society's reaction into law. I believe we, as legislators, should lead society, not simply follow the public's instant reaction of abhorrence.

Reverend the Hon. Fred Nile: Have you heard of democracy?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is a very human reaction, and we should respond not by giving in to that gut reaction—as Reverend the Hon. Fred Nile's interjection suggests—but by thinking through the problem and arriving at a solution rationally. Psychological profiling, which has been much pooh-poohed, has been used very successfully to solve crimes of violence, particularly serial murders and serial rapes. The psychological profile of the criminal who commits a certain crime is determined and used to identify likely future offenders. If that method were used to identify potential arsonists, programs involving victims could be established to demonstrate the consequences of this offending behaviour—it is not about the excitement of watching the flames; there is a downside.

Incarceration of each prisoner costs $60,000 per annum, so we can calculate how much it costs to keep an offender in gaol for 14 years. We could use that money to fund programs to identify likely offenders and address preventative measures. There are alternative solutions to this problem. I do not claim that they are necessarily correct, but I do state that the Government has no proof that these legislative provisions will work. The Government does not appear to have considered any alternatives. It is a case of "shoot first and ask questions later". The Government is riding a tide of public opinion instead of trying to solve the problem.

The bill inserts a new offence in the Crimes Act 1900 relating to sabotage. Under new section 203E (1) a person who is found guilty of intentionally causing a fire and who is reckless as to spreading the fire to vegetation on any public land or land privately owned by another person can be sentenced to a maximum of up to 14 years imprisonment. New section 203E (3) provides a defence to or an exemption from this offence for firefighters or a person acting under their direction in the course of fighting a bushfire or during hazard reduction operations. New section 203E (2) codifies the recklessness of the offender that can be used by the prosecution to prove mens rea, or criminal state of mind. In his second reading speech the Minister said:

> Recklessness will mean that the defendant was aware when intentionally causing a fire that there was a possibility that the fire could spread to vegetation on any public land or land belonging to another in a way that was out of the defendant's control.

Schedule 2 amends the Criminal Procedure Act 1986 to provide that this new indictable offence can be dealt with summarily. This bill is intended to be viewed as part of a bushfire prevention strategy. However, as consideration of "hazard reduction and other fire prevention measures" was part of the terms of reference of the Joint Select Committee on Bushfires, it would have been appropriate to refer this bill to that committee while it was conducting hearings. It is disappointing that the Government continues to pass legislation without any real evidence to support whether it will work. We will not get good legislation unless we first identify the problem, ask sensible questions about it, develop some hypotheses, test those hypotheses against whatever evidence is available, and come up with better preventive solutions. Rather, this Government simply adopts a populist punishment mentality, which this legislation encapsulates.

Reverend the Hon. FRED NILE [6.00 p.m.]: The Christian Democratic Party supports the Crimes Amendment (Bushfires) Bill, which will amend the Crimes Act 1900 to include a specific defence of causing a bushfire. The Hon. Dr Arthur Chesterfield-Evans is a member of the Australian Democrats, which presumably advocates democracy, but apparently he does not adopt the party's policies. I should have thought that his party's policies are representative of the majority view, so it seems that the Hon. Dr Arthur Chesterfield-Evans does not understand what democracy means. If there is a strong reaction in the community and the community wants stronger laws, there is nothing wrong with the Government responding to that call. Given the number of fires that were lit during the Christmas-New Year period, and the anger that gradually arose in the community when it was realised that many of the fires were deliberately lit, obviously a message had to be sent to the community, particularly to young people who may think it is a minor matter to start a bushfire.

I presume the Government will publicise this legislation and the impacts of it, including the maximum penalty it provides. Some members have suggested that everyone who lights a fire will go to gaol for 14 years. Obviously the court will take into account all the factors and circumstances. Exceptions to the offence include where the person is a firefighter. I think everyone was shocked to learn that one of the people who lit fires during the Christmas-New Year period was a firefighter, a young man who seemed to get a good feeling from lighting fires and then going to fight them. It seems that his was not a malicious act but was probably a matter of his immaturity.

The Hon. Dr Arthur Chesterfield-Evans: Do you still want to give him 14 years, Fred?

Reverend the Hon. FRED NILE: No. I am simply saying it is a problem. We have to assess the people who are recruited into the firefighting service, to ensure that firefighters have some maturity. Firefighting is not simply a matter of running around in a fire engine, as some immature people believe. Those sorts of people are not suitable for the firefighting service. The young man I spoke about should never have been recruited into the service in the first place. Even though the Rural Fires Act 1997 provides for a maximum penalty of five years imprisonment or a fine of $110,000 for lighting a fire, I believe it is important to balance that with a new section in the Crimes Act, as the bill does. The offence in that next section is based on the Model Criminal Code offence established by the Model Criminal Code Officers Committee, which represents a thoughtful group of people. Therefore we have confidence in the legislation and support it.

The Hon. IAN COHEN [6.03 p.m.]: I wish to add to Ms Lee Rhiannon's comments on the Crimes Amendment (Bushfires) Bill. I am concerned that the Carr Government is introducing draconian legislation. It almost appears as though there is no bushfire legislation in existence. As Reverend the Hon. Fred Nile accurately said, there are already adequate bushfire laws. I doubt very much whether the fact that there is new legislation providing for an offence carrying a maximum penalty of 14 years imprisonment will have an impact upon an arsonist or firebug who wants to go out into the bush and light fires. Surely the Government can come up with a strong series of advertisements or statements to educate the community so they realise the present laws are quite adequate. People who light fires in the bush need to be taught that, under the existing law, they will really feel the heat, so to speak, if they are caught. But it is a far deeper issue than this.

How do we catch people lighting fires in the bush, and how do we deal with the situation? Simply introducing legislation that makes the Government sound as though it is beating the law-and-order-drum does not necessarily resolve the problem. It will not turn around the behaviour of someone who is emotionally immature, regardless of their age, who goes into the bush and lights a fire. Juveniles who light fires often think it is a bit of a lark when they see those fires on the television; they think they are having a bit of a go at society. Similarly, as has been referred to, a number of members of bushfire brigades have been pyromaniacs, and a few of them have been caught.

The Government needs to consider regulating the problem in a way that really has an impact. The impact lies with education. Some people do not understand—hopefully, given the devastating fires of recent times they will now understand—the impact that this type of reckless activity can have on people's livelihoods. I am certain that the threat of a 14-year gaol term instead of a five-year gaol term will not make any difference to those who have a psychological illness. They will not change their ways, yet they need to be controlled.

With bushfires it is extremely important that we work towards getting the community on side. That means looking at farming practices and people's acceptance of reckless bushfire management. We need to get more people on side so that lighting fires is not accepted, and so that people will refer to fire management authorities before they go ahead and light fires. A member of the other place who is a bit of a political incendiary, the honourable member for Coffs Harbour, was caught lighting a fire in a high fire-danger season.

The Hon. Dr Arthur Chesterfield-Evans: Was it reckless?

The Hon. IAN COHEN: Yes, it was reckless, and one would expect members of Parliament to set a better example. Why did it happen? It seems that old habits die hard. It seems that in country areas there is a tendency for people to want to light up, and it can be quite careless. Time and again we hear of people in rural areas lighting fires, in some circumstances knowing that conservationists on neighbouring properties will suffer as a result. Having said that, I do not think that the Carr Government will resolve the problem by simply introducing legislation that increases the penalties.

As Ms Lee Rhiannon said, the Greens are not opposed to fire management, but it is important that there be proper scientific management. Certain areas of bush should not be burnt, but unfortunately they are, and this creates an imbalance in the ecosystem. Rainforest areas are being burnt and species are disappearing. One might argue that indigenous fire management over many generations has resulted in changes to the ecosystem, and that is not necessarily a plus for the environment. These days we have very sensitive ecosystems that, without proper scientific research, are torched inappropriately. Often this is generated by fear. But why is there so much fear of fires? The answer is largely that our building design does not provide maximum protection in terms of fire rating, ameliorative measures such as rock walls in appropriate places, and so on, and that housing estates are built in fire-prone bushland areas that are likely to be affected by wildfires. And, of course, building design and placement are really the responsibility of councils.

Greater attention needs to be given to the positioning of developments, particularly in the Blue Mountains, where local councils have been slow to acknowledge the danger of developing on land contiguous to fire-prone areas. We have heard of brave volunteer fire fighters fighting bushfires while twisted people are running around starting other fires. Deliberately lighting a bushfire has to be one of the lowest acts. The community needs to be educated so that those who light the fires are caught. People are able to get into isolated areas, start fires and get away with it. In a National Parks and Wildlife Service area near to where I live I ran to a fire that had been started. A couple of young blokes came around the track; they had obviously started the fire but my first priority was to try to put the fire out, so they got away with it.

Attitudes can be frustrating. Community vigilance must be enhanced, but this legislation does not add anything to it. I just wish that the Carr Government would focus on community education and proper methods of scientific bushfire assessment, rather than keeping its eye solely on the coming election. The problem can be dealt with by discouraging people from starting bushfires and by achieving greater scientific management over the fire regime in rural areas. Greater community education and awareness will greatly assist in this endeavour.

We were all dismayed on hearing that about 700,000 hectares of bush had been razed, many buildings lost, and people's homes and family lives destroyed. A clear scientific approach is needed, not the knee-jerk reaction in this bill. The legislation seems to be part and parcel of the support for more bush burn-off. In urgent times we need clear heads. Proper fire management can include burning off but it is not a panacea for every problem. Wholesale burn-off could end up destroying many more endangered plant and animal species. We need to be led by science on this matter, not by emotions. I commend the work of the Fire Brigades Commissioner and his staff for putting forward a balanced position on a number of vexing issues. The legislation does not get to the root of the problem and resolve it, and does not do what education could do to create a more fireproof conscious society.

The Hon. MALCOLM JONES [6.13 p.m.]: The Crimes Amendment (Bushfires) Bill proposes to insert into the Crimes Act 1900 a new offence of causing a bushfire. The offence is aimed at persons who intentionally cause a fire and intend the fire to spread or are reckless as to the spread of the fire beyond their control to vegetation or public land or land belonging to another. The Attorney General, Minister for the Environment, and Minister for Emergency Services said, in reply to the second reading debate on 8 May 2002:

> New legislation that will be shortly introduced in this House will re-regulate the appropriate paperwork for hazard reduction. For many people who live in remote areas paperwork is not a long suite. Will the Government give an ironclad guarantee that under this legislation a person who chooses to hazard reduce his own property, or wants to hazard reduce a neighbouring property or a property belonging to another person who perhaps cannot do that job, but does not get the paperwork right, will not be caught up in this measure?

I would also like clarification on why section 101 of the Rural Fires Act is insufficient and why this bill is required at all. It may be that the penalties under that Act may need to be increased and made more severe. Why is this bill required? Why cannot that legislation be amended? Is it because during the Christmas bushfire emergency a fuss was made over the arsonists—and there were reported to be many of them, and as far as I know only one has been found guilty—to obscure, particularly in the *Daily Telegraph*, the lack of hazard

reduction carried out by the National Parks and Wildlife Service and the declining amount of hazard reduction that has taken place during the term of this Government? I live in a bushfire prone area now and I put my hand up to join the Rural Fire Service. I have done all the basic training, and mixing with the other firefighters I hear their anecdotes about arsonists and so on. Anyone who is prone to be an arsonist tends to be known in the area: they are relatively easily identified.

The Hon. Ian Cohen: Why don't they report them to the police?

The Hon. MALCOLM JONES: They are reported, but you have to catch them doing it. There was one fellow—and everybody knew who he was—who lost his driver's licence and they caught him because he lit a fire and he was coming back from the fire on his bicycle. But that was many years ago. Ms Lee Rhiannon said that the Greens are in favour of hazard reduction. The Hon. Ian Cohen reiterated that view but went on to argue why there should not be hazard reduction. During the bushfire inquiry—which I attended on a number of occasions to listen to the evidence—the first cab off the rank was the Nature Conservation Council. They argued strongly against hazard reduction burning.

A professor from Wollongong University spoke strongly against hazard reduction based on the history of fires that had been researched in Brisbane Water National Park, but he absolutely refused to differentiate between the large holocaust type fires that we have experienced in the last few years and the relatively cooler fires experienced in hazard reduction burning. He wanted to lump them altogether. There were comments by the Director-General of National Parks and Wildlife about why they should have gates on the wilderness areas. Gates are dreaded by the Rural Fire Service blokes. They hate the thought of those gates. Heat distorts the gates. The lock is in a long tube, and it is difficult to put the key in, particularly if it is red hot.

The Hon. Ian Cohen: You would not be going in if the gate was red hot. Give us a break.

The Hon. MALCOLM JONES: If you are firefighting, you can go down a trail with the very best of intentions and the fire can turn around completely—180 degrees—and you can find yourself running for your life along any trail that exists.

The Hon. Ian Cohen: I withdraw my objection.

The Hon. MALCOLM JONES: Then you come to the impassable gate made of 100 millimetre steel. If the damned thing is warped, even with a key you cannot open it. I pray it never happens, but if anybody is burnt to death in those circumstances it would be the greatest tragedy. The Director-General of National Parks and Wildlife went on to say that these gates keep people out of wilderness areas. You would have to be pretty stupid to travel into an incendiary bomb to explode it and then expect to survive. The bill is probably marginally worth supporting.

The Hon. Richard Jones: Would it make any difference?

The Hon. MALCOLM JONES: The primary consideration is to protect the public from an arsonist who is prone to lighting fires. The public can be protected from such acts by locking up the arsonist for a substantial period of time. I do not believe people light fires for a lark. However, many fires are lit by people who have serious resentment problems and probably need psychiatric attention, and those people have to be found and given treatment. Primarily, however, the public has to be protected. I commend the bill to the House.

The Hon. HELEN SHAM-HO [6.23 p.m.]: I want to speak briefly on the Crimes Amendment (Bushfires) Bill. The bill establishes the criminal offence of causing a bushfire. This offence includes lighting a fire, maintaining a fire or failing to contain a fire. I am sure honourable members will remember only too well the mayhem and fear caused by the bushfires at the end of December 2001 and in early January this year. This bill is the Government's response, as expected by the community. I imagine that all honourable members have come across the tragedies of people having their homes burnt down and losing valuables and family heirlooms. Losing a home is a devastating event at any time, but I am sure that the loss was felt even more by those people whose homes burnt down on Christmas Day. I remember hearing of people who lived in areas just outside Sydney and who had come to Sydney for Christmas celebrations, only to return home to ruins. I recall that day vividly. The sun was an unnaturally bright pink and it was almost impossible to breathe due to all the smoke and ash flying through the air.

Some members would have had friends or family who were personally affected during the January bushfires. A member of the Legislative Council committees staff, Annie Marshall, lost her home during this time. I am glad that members and staff of Parliament rallied together to hold a fundraising sausage sizzle for her

in January. I congratulate all the organisers in Parliament House on that small but well-meaning gesture. Despite the losses wrought by the bushfires, I felt truly inspired by the great Australian tradition of helping out others in need. Many people, ordinary Australians, volunteered during the January bushfires, sometimes risking their own homes and at times their own lives. Many people volunteered for firefighting, giving up their Christmas holidays, to stop the fires from spreading. Others helped by making sandwiches or by looking after their neighbours' children. Both the Premier and Prime Minister publicly praised the great Australian volunteer spirit. Indeed, these people should be commended for their time and effort.

The effort that Australians put into fighting those fires can be compared to the Olympic spirit we showed the world in September 2000. I am proud to say that the Chinese community also was very involved in helping out victims of the bushfires. On 12 January, in a very quick response, Robert Ho and I helped a women's group, the Way-In Women's Network, and the Golden Century Seafood Restaurant to organise a community fundraiser during this difficult time. We raised more than $75,000 for the bushfire victims. It was pleasing to receive a message from the Premier on this occasion. It was very encouraging. Part of that message from the Premier said:

> The Australian Chinese community is once more taking the lead in providing assistance to fellow Australians in need of help. I congratulate all those present at the lunch for your important contribution to this community effort. In particular I wish to congratulate the Way-In Women's Network, Golden Century Restaurant and Councillor Robert Ho for organising the fundraising luncheon. I hope that the worst of the fires is now behind us. It is now time to rebuild. On behalf of the people of New South Wales I say thank you to the Australian Chinese community.

The fundraiser luncheon was attended by Mr Greg Mullins, Assistant Commissioner and Director of State Operations for New South Wales Fire Brigades. I was pleased to receive an email from him after the luncheon. He was very generous. He stated in the email:

> Just a short note of thanks, firstly, for inviting me to attend the bushfire fundraiser at the Golden Century, and secondly, for the generosity displayed by the Chinese Australian community to other Australians in need. I feel very privileged to have been present and know that the funds raised will be very much appreciated.

In praising the volunteer spirit, we need also to condemn the destructive actions of many people in lighting bushfires deliberately. Most Australians were shocked and even outraged to learn that about half of the bushfires were lit deliberately. I can imagine the sadness that accompanies the loss of a home and important personal belongings. However, the knowledge that many of the fires were deliberately lit would have made these losses even harder to bear. I think we can all understand the anger and even the outrage that people would feel on discovering that the loss of their homes was the result of a person intentionally lighting a bushfire. People who deliberately light a bushfire should be punished, and punished severely.

I can understand that in the aftermath of the bushfires there were many community calls for harsh penalties for arsonists. This bill reflects this community expectation. We are all aware that this bill sends a message that we as a society condemn the deliberate lighting of bushfires. Yet, while I understand the emotional sentiment behind the bill, as a lawyer I feel it is important to question whether this is good law. It is important to remember that in January the Director of Public Prosecutions spoke out against the Premier's call for tough new penalties for juvenile offenders, saying that existing laws were sufficient. This is true. I agree with that, and it is acknowledged in the Minister's second reading speech. The criminal law is already sufficient to deal with malicious damage to property. Sections 195B and 196B of the Crimes Act both provide penalties for malicious damage to property.

However, having said that, I will not oppose the bill. I support it. I believe that bills passed in this House and in the other place are, in large part, educative—the intention is often to change the behaviour of certain citizens. This bill may do some good in deterring some people from lighting bushfires next summer, and, hopefully, the summers after that. I also hold some hope that this bill, once it becomes law, will make the community feel more secure. While I do not believe that retribution and revenge is the way to stop bushfire arsonists, I believe the community has the right to express its absolute contempt for such actions. By having a specific offence of causing a bushfire, the community will feel protected. I commend the bill to the House.

Debate adjourned on motion by the Hon. Peter Primrose.

[*The Deputy-President (The Hon. John Hatzistergos) left the chair at 6.30 p.m. The House resumed at 8.00 p.m.*]

CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT BILL

SUMMARY OFFENCES AMENDMENT (PLACES OF DETENTION) 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) [8.00 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

The first Bill will amend the *Crimes (Administration of Sentences) Act 1999* in relation to the arrest of escaped inmates; the making of oral submissions to the Parole Board by victims of serious offenders; the seizure, forfeiture and disposal of property brought unlawfully into correctional centres; and for other purposes.

The second Bill will amend the *Summary Offences Act 1988* in relation to the powers of correctional officers to stop, detain and search people at places of detention; and for other purposes.

The *Crimes (Administration of Sentences) Act 1999* is the principal Act which governs the administration of sentences by the Department of Corrective Services.

A number of minor deficiencies in the Act have come to light.

The *Crimes (Administration of Sentences) Amendment Bill 2002* will rectify those deficiencies and make other changes in order to facilitate the administration of justice and the effective and secure operation of the correctional system.

I shall now outline the more important changes being made.

Section 39 of the *Crimes (Administration of Sentences) Act 1999* governs the process by which an inmate who has escaped from custody is returned to custody upon arrest.

The amendment to section 39 will make the section consistent with section 352AA of the *Crimes Act 1900*, which relates to the power of a constable to arrest prisoners unlawfully at large other than by means of escaping and the process of returning them to custody after arrest.

The amendment to section 39 will also rectify a deficiency which contributed to the erroneous release of Paul Etienne, an offender who escaped from Central Local Court on 15th November 2001 by crashing through a glass door.

Since Etienne escaped before his court matter had been disposed of, the court did not issue a warrant of adjournment (bail refused) as it would have done had he not escaped.

One of the contributing factors to the erroneous release of Etienne was the fact that the police who recaptured him took him straight back to prison—as the Act currently requires.

Unfortunately their action in taking him there, instead of first taking him before a court and charging him with escape, resulted in the Department of Corrective Services not having any authority to hold him in respect of the charges he was facing when he escaped.

Corrective Services received and held him under a warrant issued when he was sentenced for a previous offence.

When that sentence expired, Corrective Services had no further warrant with which to hold him.

If the police had first taken Etienne before a court and charged him with escape, the court would have remanded him in custody and, as a result, Corrective Services would have had authority to keep him in prison pending charges when his previous sentence expired.

The amendment to section 39 will require police to take an escaped inmate before a court before returning the inmate to prison.

This amendment to section 39 is one of a number of steps being taken by the Government to reduce the likelihood of another erroneous release.

Already, administrative procedures relating to the discharge of inmates from custody have been revised, particularly in relation to inmates who have pending court appearances.

Procedures have also been strengthened to ensure that an inmate's warrant file clearly documents that all sentence administration details have been properly investigated and verified prior to an inmate's release.

Under the new procedures, a senior commissioned correctional officer now has ultimate responsibility for authorising an inmate's release.

Additionally, where an inmate's file contains an order requiring a court appearance subsequent to their date of release, the relevant court is contacted at the earliest possible opportunity (and no later than the day before the scheduled discharge).

The court is advised of the inmate's impending release, and asked if it is intended that the court issue an order which authorises the inmate's continued detention beyond his or her date of release.

The amendment to section 78 of the *Crimes (Administration of Sentences) Act 1999* is a minor technical amendment.

Section 78 makes provision for the use of dogs in the maintenance of security and good order within correctional centres and complexes.

The proposed amendments to the *Summary Offences Act 1988*, which I will speak about presently, will clarify the use of dogs by correctional officers in searching visitors to correctional centres to detect illegal drugs and other contraband.

The amendment to section 78 of the *Crimes (Administration of Sentences) Act 1999* makes it clear that nothing in the section limits the power of a correctional officer to use a dog under the *Summary Offences Act 1988*.

So the *Summary Offences Act 1998* will enable the expanded use of dogs to within the vicinity of a correctional centre or complex when trying to prevent contraband entering the centres.

Section 79 of the *Crimes (Administration of Sentences) Act 1999* governs matters which can be the subject of regulations made under Part 2 of the Act.

The amendment to section 79 will enable the Department of Corrective Services not only to confiscate property unlawfully brought into a correctional centre, but also to seize and dispose of such property.

For example, if a person consistently tried to bring a camera into a correctional centre, officers would ultimately be able to seize and destroy the camera.

Disposal of the camera would deter future attempts to bring a camera into a correctional centre without authority.

Of course, visitors are not allowed to take photographs or record video or audio tapes in a correctional centre without the prior permission of the governor of the relevant correctional centre.

Photographs and tapes can constitute a grave security risk and could assist in an escape.

Correctional officers would not unnecessarily seize or dispose of a camera or other property inadvertently brought into a correctional centre.

But where a person persistently tried to bring a camera into a correctional centre knowing that it was against the law, and one day actually succeeded, then mere confiscation of the film and banning the person from future visits would not be a sufficient deterrent.

The amendments to section 147 and section 190 of the *Crimes (Administration of Sentences) Act 1999* will give to a victim of a serious offender a statutory right to make an oral submission to the Parole Board when it considers making a parole order concerning the serious offender.

Currently, such a person may only make an oral submission if the Parole Board gives its approval.

This is an important change and will benefit the victims of serious offenders.

As I said in the House on 13th March this year in response to a Question Without Notice from the Honourable Member for Georges River, I believe that victims will welcome this change.

Often, a victim prefers to make a personal approach at a parole hearing to explain their personal circumstances and concerns.

Making a personal approach can often demonstrate a victim's concerns far more clearly than a written submission might.

The change will therefore allow a victim to have their personal say regarding the offender—whose crime may still affect the victim long after it was actually committed.

The word "victim" is defined quite broadly in section 256 (5) of the *Crimes (Administration of Sentences) Act 1999.*

It means a victim of an offence for which the offender has been sentenced, or the victim of any offence which is taken into account during the sentencing process, or even a family representative of such a victim (if the victim is dead or in any way incapacitated).

And, for the record, the Department of Corrective Services also maintains the Victims Register under the *Crimes (Administration of Sentences) Act 1999*.

I am advised that 1,156 victims had registered with the Victims Register by 31 December 2001.

At that date there were 617 "active" registered victims in relation to offenders in custody on that date.

About 200 registered victims per year are advised of an offender's external leave or parole consideration—about two-thirds of whom express a wish to make some form of submission to the Parole Board or the Serious Offenders Review Council.

I would like to acknowledge the work done in this area by Martha Jabour from the Homicide Victims Support Group.

I met Ms Jabour in my Liverpool Street office on Tuesday 19th February 2002 to discuss how we could improve the representation of victims of homicide when they addressed the Parole Board.

Our meeting—and many of her group's proposals—are constructively included in these proposed new amendments.

And for the record, the Government will also be establishing a new part-time position of Victims Support Officer.

This will occur once all the relevant grading and advertising procedures are put in place.

This officer will develop and run information sessions for victims of crimes to help them understand the process and procedures involved in the victims rights and parole considerations.

The amendments to section 263 of the *Crimes (Administration of Sentences) Act 1999* are minor technical amendments.

Section 263 currently excludes personal liability for acts and omissions done in good faith in the administration and execution of the Act.

But correctional officers also carry out functions under the *Summary Offences Act 1988*.

In particular, a correctional officer has the power to arrest a person who attempts to bring contraband into a correctional centre.

Amendments to section 263 of the *Crimes (Administration of Sentences) Act 1999* will extend the exclusion of personal liability for acts and omissions done in good faith by correctional officers and departmental officers.

I now turn to proposed amendments to the *Summary Offences Act 1988*.

The *Summary Offences Act 1988* deals with offences in public places and other places to which the public has access.

Part 4A of the Act relates to offences committed by visitors at places of detention, which are defined as correctional centres, correctional complexes and periodic detention centres.

The Department of Corrective Services wages a constant war against contraband in correctional centres and, in recent times, has been particularly successful in detecting a wide variety of contraband which visitors have attempted to smuggle into correctional centres.

The Government is committed to the prevention of illegal drug use, and the harm caused by illegal drugs, in correctional centres.

Illegal drugs in correctional centres debilitate the health of inmate drug users who become unable to participate effectively in inmate development programs.

They can also potentially lead to stand-over tactics, inmate power structures, an underground economy, needle-stick injuries, assaults and the potential for corruption.

Contraband is not, however, restricted to illegal drugs.

It also includes syringes and other implements of drug-use, offensive weapons, alcohol, and money.

Contraband also includes other unauthorised items such as mobile phones, which can be used by inmates to further their criminal activities.

Mobile phones are being intercepted in increasing numbers.

The circumstances in which contraband can be trafficked into correctional centres are not limited to people visiting inmates.

Contraband can be hidden inside tennis balls or other items and thrown over perimeter walls.

Contraband can also be left hidden in areas near to correctional centres (in car parks or under bushes, for example) for later collection by inmates engaged in ground maintenance.

Despite the best efforts and vigilance of correctional officers in detecting contraband, some contraband still gets through to inmates.

The existing powers of correctional officers to detect contraband therefore need to be increased.

The Bill will give a correctional officer a clear power to stop, detain and search a person whom the officer reasonably suspects may be attempting to smuggle contraband into a correctional complex or correctional centre—or whom the officer reasonably suspects may be carrying out or about to carry out some other unlawful activity.

Apart from inmates and staff, there are three categories of people who may be present at a correctional complex or correctional centre:

- people wishing to visit inmates;
- people visiting as part of their employment (such as delivery drivers, tradesmen effecting repairs or academics doing research);
- and people seeking to carry out some unlawful purpose, such as introducing contraband or intending to aid and abet an escape.

The *Crimes (Administration of Sentences) Act 1999* applies primarily to inmates and does not cover offences which may be committed by these other categories of people.

Existing sections 27B to 27D of the *Summary Offences Act 1988* already give a correctional officer power to arrest a person trafficking contraband into a correctional centre or other place of detention.

And correctional officers do use this power.

As recently as 27th April this year, correctional officers arrested two people outside Silverwater Correctional Centre after one of them was seen to step out of a car and throw a tennis ball over the fence.

The tennis ball was retrieved and found to contain 8 grams of green vegetable matter.

But the *Summary Offences Act 1988* does not give a correctional officer the power to stop, detain and search a person who may be attempting to smuggle contraband into a correctional centre.

Only police officers currently have that power.

Authorised correctional officers can scan visitors with a scanning device such as a walk-through metal-detector.

They can require visitors to empty the contents of their pockets and personal possessions such as bags.

And they can require a visitor to submit to screening by a drug detector dog.

If a person refuses to comply, or if the drug detector dog gives a positive reaction, the officer may refuse to allow the person to enter the correctional centre.

But the officer cannot force the visitor to remain until a police officer is called to conduct a search.

Yet sometimes, grounds for arrest may only arise after a search.

Similarly, the existing section 27E of the *Summary Offences Act 1988* already gives a correctional officer the power to arrest a person loitering about or near any correctional centre or other place of detention without a lawful excuse.

But a correctional officer cannot search such a person.

The officer can ask a loitering person whether they have any lawful excuse to do so, but the officer does not have the power to force the person to demonstrate a lawful excuse or to stop and detain them while police are called to question them.

The new section 27F will therefore give a correctional officer new powers to stop, detain and search a person and a person's vehicle in or near a correctional centre or other place of detention,

The officer can do this if he or she reasonably suspects the person possesses contraband and intends to introduce it into the place of detention, or intends to carry out some other unlawful act.

So the amendment to section 27F strengthens the current powers whereby a correctional officer can only ask a person to empty bags or pockets, or be screened by a metal detector or a drug detector dog, and deny them entry to the centre.

The new section 27F also gives a correctional officer the power to seize items of contraband found in any search.

The power to stop, detain and search a person or a person's vehicle or personal possessions is an intrusive power.

Accordingly, the Bill requires that a correctional officer may only exercise this power in circumstances where the officer has reasonably formed the view that a person has committed, is committing or has demonstrated an intention to commit an offence.

The Government appreciates that some members of the community may view this section as an attack on civil liberties.

But the new section 27G responds to such concerns.

This section sets out in detail the way in which a search by a correctional officer is to be conducted.

A search conducted by a correctional officer must be conducted with due regard to dignity and self-respect, and by an officer of the same sex as the person being searched.

In particular, a correctional officer will not be permitted to conduct a "frisk-search" or a "strip-search" of a person, or direct a person to remove any item of clothing other than a hat, gloves, coat, jacket or shoes.

The current requirement that a "frisk-search" or a "strip-search" can only be conducted by a police officer is maintained under the amendments.

Additionally, a search of a child or a mentally incapacitated person must be conducted in the presence of an adult who accompanied that child or mentally incapacitated person to the place of detention.

Or, in rare cases, where no adult accompanied them, the search must be in the presence of a non-custodial staff member who will act as an observer.

Honourable Members may question why children or mentally incapacitated persons need to be searched at all when visiting a correctional centre.

Unfortunately, the ingenuity of people who attempt to smuggle contraband into correctional centres does not stop at confining contraband to their own persons or personal effects.

Concealing contraband in babies' nappies, children's clothes, prams and strollers is one of the more common ways of attempting to smuggle contraband into correctional centres—particularly illegal drugs which can be easily concealed in such places.

Correctional officers therefore do need this search power.

The use of babies and children's items is a reprehensible situation—but an unfortunate reminder of the lengths to which some criminals will go to introduce contraband into correctional centres.

The new section 27H authorises a correctional officer to use a dog to conduct any search under the amendments.

Under this section, a correctional officer using a dog to conduct a search must take all reasonable precautions to prevent the dog touching a person, and must keep the dog under control.

However, the new section 27I provides that a correctional officer may use such force as is reasonably necessary to exercise the function under part 4A.

To further answer any possible objections to the new powers of correctional officers, the new section 27J provides for additional safeguards.

Under this section, a correctional officer using the power to detain and search a person or vehicle must not detain the person or vehicle any longer than is reasonably necessary, and in any event for no longer than 4 hours.

The correctional officer must also clearly identify himself or herself (if not in uniform) as a correctional officer and must provide the reason for the exercise of the power and a warning that failure or refusal to comply with a request or direction is an offence.

The new section 27K also creates the following offences:

- failing or refusing to comply with a request made or a direction given by a correctional officer with respect to the new powers to stop, detain and search persons and vehicles;
- failing or refusing to produce anything detected in a search;
- and resisting or impeding a search of a person or vehicle.

In relation to the second point—about failing to produce anything detected in a search—I can provide the House with an example of what we mean.

A correctional officer may direct a person to take off his shoes as part of a search.

If, after the shoes are removed, the officer detects an unusual lump in the person's sock, the officer may reasonably assume that the lump could be contraband.

The officer may then order the person to produce the item from the sock (he cannot touch the person).

And if a person refuses, they commit an offence.

This and the other new offences are subject to a maximum penalty of 10 penalty units—currently $1,100.

This maximum penalty is less than the maximum penalties for actually introducing contraband but is equal to the maximum penalty for knowingly providing false identity or residence details while visiting correctional centres.

The new section 27L provides that none of the amendments proposed, limits any other powers or functions of a correctional officer or a police officer under this or other Acts.

And the new section 27M provides that evidence is not inadmissible if an item which is discovered in a search is different in nature from the reason the search was carried out.

For example, if a search is carried out in response to the reaction of a drug detector dog and it revealed weapons instead of drugs, the weapons would still be admissible as evidence in proceedings which are taken against the person concerned.

And finally,

The new section 27N provides that a search conducted by a person under the direction of a correctional officer does not subject that person to any personal liability, action, claim or demand.

In conclusion, the proposed amendments to the *Summary Offences Act 1988* will provide correctional officers with the legal powers they need to reduce the supply of illegal drugs and other contraband into correctional complexes and correctional centres, without undermining the civil liberties of persons visiting those places.

The amendments are a valuable weapon in the Government's fight to keep contraband out of correctional centres and prevent illegal drug use within correctional centres.

I commend the bills to the House.

The Hon. GREG PEARCE [8.02 p.m.]: These bills deal with a number of correctional services issues. The Opposition does not oppose the amendments but it does have concerns about the administration of the Department of Corrective Services, particularly the department's blunders leading to the release of prisoners not entitled to be released—I think 12 since January last year. One, Mr Paul Etienne, was at large for a considerable period. His escape was the catalyst for the bills being before the House tonight.

The requirement for an escapee to be brought before a court before being returned to prison, one of the amendments to the Crimes (Administration of Sentences) Bill, arises from the mistaken release in December 2001 of Paul Etienne, the gentlemen I mentioned a little earlier. He had escaped from Central Court a month earlier by crashing through a plate glass door. Etienne was recaptured, taken to hospital for treatment and then taken back to gaol. He was never charged with escaping from lawful custody. When his sentence for a driving offence expired he was released even though he was on remand for attempted murder because, the Government says, the department had no further warrant with which to hold him. He was at large for 34 days after his erroneous release. Etienne was released primarily because of the incompetence of the department, not because of a legislative flaw. So in one sense it is disappointing that we have to deal with this issue by way of legislative changes.

The second reading speech mentions changes to procedures for the release of inmates, including the requirement for a senior commissioned officer to have ultimate responsibility for authorising an inmate's release. That seems to be a sensible requirement but one that it is not necessary to embody in legislation. This is a grab bag of changes. An important amendment relating to the administration of correctional service facilities concerns the disposal of goods unlawfully brought into prisons. Other amendments relate to the rights of victims of crime, prisoners and visitors to gaols, and also the rights of police officers and corrective services officers to undertake searches of prison visitors and other actions. A number of commentators have concerns about these amendments, particularly in relation to the search provisions for visitors to gaols. However, it is important to ensure that it is very difficult for people visiting gaols to smuggle drugs and other contraband into the gaols or to help organise escapes.

A sensible amendment will permit oral submissions by victims at Parole Board hearings. The Opposition will not oppose the amendments, which are essentially intended to reduce the incidence of accidental releases from custody. There should not be any accidental releases from custody in the Opposition's view. In the last couple of hours we have been handed amendments to be moved by the Australian Democrats and, just in the last moment or so, one of the other Independents. It is not helpful for the crossbenchers to be providing amendments at the last moment. If they were serious about them perhaps they would have done it a little earlier. I will speak on the amendments at the relevant time in Committee. The Opposition is prepared to proceed with the passage of the legislation.

The Hon. RICHARD JONES [8.09 p.m.]: The amendments in these bills will give correctional officers new powers to stop, detain and search a person and a person's vehicle in or near a correctional centre or other place of detention if they reasonably suspect that the person possesses contraband and intends to introduce it into the centre or intends to carry out some other unlawful act. In conducting the search correctional officers will be permitted to use a dog. This is of some concern. Anxiety is already evident in the community in relation to the use of drug detection dogs, or sniffer dogs. Despite the prohibition against cannabis, in the general community 44 per cent of males and 35 per cent of females have used this drug at least once in their lifetime—and some people have used it many times. In fact, the use of the drug has increased in the last few years. This has prompted many to argue that the prohibition against cannabis is both costly and ineffective. Clearly, this prohibition should end. When such a huge proportion of the public—nearly half—choose to break the law, that law needs urgent reconsideration, particularly when much more dangerous drugs such as tobacco and alcohol are legal and the Government makes money from them.

The illegal status of cannabis has a direct and diverse impact on the prison population. Were cannabis legalised, and were the Government to open more medically supervised injecting centres for other drugs, many

of our problems would be on the way to being solved. Illicit drugs, alcohol, money and weapons are constantly found during searches of prisons across New South Wales. The Minister noted that corrective services officers, including the drug detector dog unit, conduct regular searches of visitors entering prisons. If that is that case, how are drugs and other contraband still being detected? In February and March this year officers intercepted a total of 219 grams of cannabis, 55.8 grams of other prohibited substances, 152 syringes, 106 implements such as bongs and tattoo guns, and 68 weapons, including knives, baseball bats, metal batons, scissors and so on.

The presence of drugs in prisons is the most serious and similarly intractable challenge facing corrections today. A report of the Commission of Inquiry into Drugs in Queensland Custodial Correctional Centres noted that at one time the subculture of power in prisons was in the hands of lifers and this has now passed to those who operate the drug cartels inside prison. Many inmates already have a drug-related problem or some history of drug use at the time they enter prison. In addition, due to the nature of the prison environment, such as boredom, fear, separation from family and anxiety, drug use becomes an attractive option for inmates to offset the tension of being in prison. For the same reasons, some unfortunately enter prison having never used drugs and leave as drug users.

The availability of any form of drug in the prison environment presents a number of concerns. The presence of drugs can lead to violence and abuse among inmates, and can render some prison behavioural rehabilitation programs useless. The question remains: Is the Government doing everything it can to address this problem? Interviews conducted by the Queensland commission investigators with inmates, prison staff and the Queensland Police Service confirm that nearly all forms of illicit drugs are readily available within the prison system. By far the drug most often detected through urinalysis inside prison is cannabis, with two-thirds of all positive results revealing some form of use of this drug.

The extent of heroin use inside prisons did not match the level of cannabis use. However, it is difficult to accurately determine the level of heroin use through urinalysis. This is because heroin dissipates from the body within a relatively short period after use and cannot be distinguished from other opiates using the relatively low-tech methods for random urinalysis. Naturally, the inherent danger with heroin use in the prison environment centres on intravenous administration, the presence of impurities supplied with the drug and potential overdose. All the evidence points to the fact that the transmission of blood-borne viruses, such as HIV-AIDS, hepatitis B or hepatitis C, in a prison environment is higher than first expected.

Drug trafficking in prison is an extremely lucrative business. A gram of heroin purchased on the street can be resold for double or treble the purchase price inside prison. Prescription drugs are believed to be regularly smuggled into prisons. These drugs can be easily obtained from pharmacies, are cheap and, provided the supplier of the drug has a legitimate prescription, can be obtained legally. They are easy to smuggle into prisons and in some instances are not detected by urinalysis. Alcohol is regarded by many as perhaps the most dangerous drug inside a prison environment. Side effects that cause violent episodes in many inmates are often the instigator of riots or disturbances.

In 1999 the *Medical Journal of Australia* reported that prisons in New South Wales have higher rates of HIV and hepatitis C than the general community, and drug use in gaol is increasing those rates. Public health experts argue that zero tolerance of drug use in prisons endangers the lives of prisoners. The commitment to zero tolerance should be applied to the transmission of viruses, rather than to illicit drugs and injecting equipment within prison. One study found that the incidence of HIV in people entering prisons was three times that of the population as a whole, and that the most likely route of HIV transmission was shared injecting equipment. Furthermore, up to 40 per cent of people entering prison have hepatitis C and that is being transmitted to uninfected prisoners. To tackle the issue of reducing violence, suicides and drug dependency in prison, it is crucial that we provide a safe system.

The question remains: With all the searches being conducted on visitors entering prisons, why do illegal drugs seem to be so readily available to prisoners? There are many stories of correctional officers supplying drugs to inmates. I have some examples of that, but I will not put them on the record now. To thoroughly address the problems of drugs and other contraband in prisons, I will move an amendment in Committee that provides that all the powers to stop, detain and search persons on or in the immediate vicinity of the place of detention will also apply to the correctional officers themselves. Clearly, we need to adopt thorough measures to combat the problem of contraband in prisons. Providing that correctional officers as well as visitors may be searched ensures that we are tackling the problem from every possible angle. The second amendment I will move in Committee provides that if a person is subject to a search by a sniffer dog and the search fails to detect any prohibited drugs, the State is liable to pay compensation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.15 p.m.]: The Australian Democrats can see merit in some of the proposed amendments—indeed, in only a small number of them—and we are very concerned about the rest of the bill. Many of the proposed amendments in these bills are an attack on civil liberties not only of inmates but of civilians as well. An Australian film called *Ghosts of the Civil Dead* was released in 1988 and starred Nick Cave. The film was set in a fictional privately owned prison and had two main characters providing the narrative. The prison guard believed that prisoners only respected the person who is wearing the boot kicking their face. The prison inmates believed that the little hobbies that kept them occupied were the only link to remaining human. The guards considered the limited supply of drugs trickling into prison kept the inmates under some form of control.

A new governor was appointed who confiscated the inmates' drugs and all of their possessions, and removed any sense of human dignity they had left. Gradually throughout the film tensions built and the film ended in a dramatic, violent climax. The prison narrator, who was released after killing a fellow inmate, made an interesting comment at the end of the film. He believed that he was conditioned by the prison system to become even more violent and inhuman to keep the general population disunited and scared of the "other". This would serve the interest of politicians who are tough on law and order. The prison narrator remarked, "People are scared. They are scared of each other, because of people like me."

Sadly, there is something of an analogy in that film to the way we are going in New South Wales. The Crimes (Administration of Sentences) Amendment Bill is intended to fix a few minor deficiencies in the Act. Section 39, relating to powers of arrest, will be amended by removing subsections (2) to (4) and inserting new subsections to provide that the police officer who captures an inmate escaping from custody as defined by the circumstances under subsection (1) must take the escapee to an authorised justice to be dealt with according to law. Under proposed subsection (3), a correctional officer who captures an escaped inmate under similar circumstances must take the offender to the police or before an authorised justice to be dealt with according to law.

An authorised justice can be a magistrate, a justice of the peace who is a clerk of a Local Court or the registrar of the Drug Court, or a justice of the peace who is employed in the Department of Courts Administration and who is declared by the Minister for Corrective Services to be an authorised justice for the purposes of the Act. The authorised justice may then issue a warrant for the detention of the offender. The proposed amendments are in response to issues that came to light under the circumstances that led to the erroneous release of Mr Paul Etienne. They are mainly administrative, and the Australian Democrats have no qualms in supporting these amendments. Items [4] and [5] of schedule 1 allow victims of crime and their families to make verbal submissions to the Parole Board on the bail application of the relevant offender. This initiative is a result of lobbying by the Homicide Victims Support Group. However, the following amendments warrant considerable concern.

Item [2] gives correctional services officers a blank cheque to use a dog against inmates for any purpose under another Act. A correctional services officer will also be allowed to use dogs in screening visitors. Item [3] provides regulation-making powers for the seizure and disposal of items unlawfully brought into a prison by visitors. This will be taken from them by corrective services personnel. Items [6] and [7] of schedule 1 insert new sections 27F to 27N, which will exempt correctional services personnel from any personal liability in exercising their functions as prescribed by the principal bill. It is the Democrats' view that it is very dangerous to have anyone doing anything without being responsible. Human beings have to be responsible for their actions, otherwise there is no restraint on their behaviour. If they are angry or violent there must be some external restraint, by way of a behaviour code that is enforceable. The Democrats are very worried about the civil rights affected by those items.

Obviously the people who are in control of prisons have much more power than inmates or visitors, and that needs to be taken into account by law-makers. It is not good enough to demonise people in society. That is not what we are here for; we are here to govern for all people in New South Wales in a just and equitable manner. I suppose this amendment will cover Corrective Services personnel if the dogs injure inmates or visitors by accident. The dogs must be kept under control and the personnel must be responsible as far as is reasonably possible. That cannot be avoided if we are to have any sort of justice in and around our prisons.

The Summary Offences Amendment (Places of Detention) Bill gives increased powers to Corrective Services personnel to stop, detain and search persons and their vehicles in the immediate vicinity of a prison if they suspect, on reasonable grounds, that the person intends to commit an offence under part 4A of the Summary Offences Act. Significantly, that increases the powers of Corrective Services personnel beyond prisons. I understood that the power of Corrective Services officers was limited to prisons and outside prisons it was the job of police to maintain law and order. I confess I have some sympathy for that point of view.

A prison hospital is to be built alongside Long Bay gaol and it was suggested in this House that that might improve the way that prison officers deal with the mentally ill. However, there is a danger that the ethos of prison will spread into adjacent hospital and if the powers of Corrective Services officers are extended beyond prisons that would be an even greater danger. The attitude to prisons as articulated and legislated in this place is very much towards punishment rather than rehabilitation. It would be more by luck than management if the prison culture did not reflect that. Legislation should be more towards rehabilitation rather than an endless increase in the power of the penal system. We are ignoring our history, which documents that even those who were sentenced to life imprisonment, or to hang, could do quite good work and formed the basis of a large proportion of our society. We are, again, turning our backs on our history.

Amendments will remove the arrest powers of a police officer that may be exercised by a Corrective Services officer in respect to an offence under sections 27B, 27C, 27D and 27E of the Act. Proposed section 27G outlines the conduct of a search that a correctional officer must follow. Section 27H outlines the use of dogs in searching suspects and section 27I allows the correctional officer to use reasonable force in exercising the search. Section 27J outlines safeguard measures such that a suspect must not be held for more than four hours. Under section 27K a person who refuses to comply with a request to be searched will be liable for a penalty of up to $1,100.

Section 27M states that an item discovered during a search will be admissible even if it is not the type of item suspected to be held by the person. Section 27N exempts a correctional officer from any personal liability while lawfully conducting a search. As I said earlier, that is a worrying aspect. I do not want to question the credibility and professionalism of the majority of Corrective Services personnel or police in general. However, under this bill there is potential for abuse. We ought to legislate for checks and balances to keep the behaviour of people who are in power under some sort of control. That is the essence of a democratic and decent society.

The least that can be done is for the bills to be monitored. I will move amendments similar to those made to sections 21 and 22 of the Police Powers (Drug Premises) Bill 2001. The essence of that will be that the Ombudsman will monitor the implementation of cognate bills and produce a report to Parliament two years after the commencement of the Acts. I apologise that my amendments have become available only this evening, at fairly short notice. I note that we are not going into the Committee stage immediately so there is time for members to consider my amendments. I hope that the Government and the Opposition will do that; I am sure that members on the crossbenches will.

I spoke to my staff most sternly because my amendments were not ready earlier, but we were given the bill only last week. My staff looked at their chests, and saw that there was no "S" for superman, so their efforts have been perfectly reasonable. It is very difficult with this large legislative load to do things quickly, but we do the best that we can. I hope that my amendments will be judged on their merits. This bill is fairly draconian. It is an increase in the coercive powers of police and impinges considerably on the civil liberties of vulnerable people. The least that can be done is to have the bill monitored by the Ombudsman within two years. I commend that concept to the House. I oppose the bill because it is just another increase in powers and a corresponding diminution of civil liberties.

This bill stems from the widening gap between rich and poor and the lack of support for people who have had difficult childhoods and difficulties in later life. Prohibition policies on alcohol were shown not to work in the 1930s, and will not work for hard drugs now. Each increase of penalties and each diminution of civil relativity demonstrates that prohibition does not work. A more intelligent approach is needed. I look forward to the day that the major parties join with the Democrats in a more intelligent approach to this problem in society.

The Hon. IAN COHEN [8.27 p.m.]: The Greens have concerns with aspects of the Crimes (Administration of Sentences) Amendment Bill and oppose the cognate bill, the Summary Offences Amendment (Places of Detention) Bill. The cognate bill allows a correctional officer to stop, detain and search a person or a vehicle in or in the immediate vicinity of a place of detention if that officer has reasonable grounds to suspect that the person is committing, has committed, or is about to commit, an offence. The problem is the term "immediate vicinity of a place of detention". For instance, a person may have his or her car parked in a car park of a place of detention. That person may be visiting someone in the detention centre or be there for another reason. For example, at Long Bay gaol there is an exceptionally good plant sale every two or three months.

The Hon. John Della Bosca: What plants?

The Hon. IAN COHEN: Pot plants, normal garden plants. I do not pretend to know what type, but they are legal. Growing plants is part of the rehabilitation of prisoners. Obviously the Minister is getting a little

too involved in that side of things. Customers at the plant sale have to park in the specially provided car park, which is in the vicinity of the gaol. Inmates grow the plants and help out on plant sale days. Cars parked in the car park will fall into the definition of "in the immediate vicinity of a place of detention". Visitors to the gaol and customers to the plant sale may indeed have a syringe or a cannabis cigarette in their car when they park in the car park and may have forgotten about them. It is not illegal to be in possession of a syringe, but under this bill and in that circumstance the person could get into trouble. If a correctional officer suspects that the visitor is committing, has committed or is about to commit an offence, the officer can stop, detain and search the visitor or his or her vehicle. The problem is that the visitor may have no intention whatsoever of taking a syringe or cannabis cigarette into the prison, yet he or she could be charged with an offence under part 4A of the Summary Offences Act—offences relating to places of detention. The penalties for trying to bring a syringe or cannabis cigarette into a detention centre are far more severe than for normal possession of these items.

Under the Drug Misuse and Trafficking Act 1985 people are not guilty of an offence if they are in possession of a hypodermic syringe or a hypodermic needle. However, if they are charged with bringing or attempting to introduce a syringe into a place of detention under section 27C of the Summary Offences Act they face a maximum penalty of two years imprisonment. With the cannabis cigarette, so long as the amount is under 30 grams, the amount is considered to be a small quantity which means the defendant is charged under the summary offences provisions of the Drug Misuse and Trafficking Act. The maximum penalty is 20 penalty units or two years imprisonment, or both. However, if they are charged under section 27B(4) of the Summary Offences Act with bringing or attempting to bring the cannabis into a place of detention, the maximum penalty is two years or 50 penalty units, or both. Additionally, they may not be eligible for the adult cannabis cautioning scheme, which sets the limit at 15 grams. This bill is heavy handed and unnecessary. It is a law and order bill directed towards detention centres and once again impacts in a negative way on the civil liberties of the people of New South Wales.

The Crimes (Administration of Sentences) Amendment Bill further entrenches the rights of victims to influence the outcome in Parole Board decisions. The Greens are concerned about the trend to give victims more rights in outcomes regarding the parole of inmates. A crime has been committed and the person should be appropriately punished. The penalty should be determined by looking at the crime, the nature and circumstances of the crime, any mitigating circumstances, the defendant's contrition, and any other sentencing principles. Once the individual has been incarcerated, his or her appropriateness to return to society can vary enormously depending on the circumstances of the prisoner. He or she could be a model inmate or they could find the gaol environment extremely difficult. The appropriate people to assess whether an inmate is ready to be released on parole are the members of the Parole Board. At this stage of the process victims input should be confined to the minimum. Their views and input may have been relevant during the original sentencing but, in the Greens view, the major emphasis should be on whether the prisoner has been rehabilitated enough to be released on parole. The primary consideration should be on whether the prisoner is likely to commit further crimes and, if released on parole, whether they are able to adapt to community life.

The Act already allows victims to make written and oral submissions, with the approval of the Board. The Greens believe that is more than adequate. We need to get away from assessing circumstances on the advice—for want of a better word—of victims. Justice should be undertaken from a dispassionate point of view so that there can be a clear and adequate assessment of a prisoner. The Parole Board does that most effectively. If victim input is allowed at that stage it could be detrimental because obviously they are affected and are not the most objective people to be involved.

The Hon. Greg Pearce: They are victims.

The Hon. IAN COHEN: Of course they are victims but they should not be involved in an objective legal process.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [8.34 p.m.], in reply: I thank honourable members for their contributions and I commend the bills to the House.

Motion agreed to.

Bills read a second time.

GREYHOUND RACING BILL

HARNESS RACING BILL

Second Reading

The Hon. MICHAEL COSTA (Minister for Police) [8.35 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

The object of the legislation before us is to repeal the:

- Greyhound Racing Authority Act, and
- Harness Racing New South Wales Act;

and to provide for the restructure of the Greyhound Racing Authority and Harness Racing New South Wales so as to:

- Separate the commercial and regulatory activities; and
- Give greater emphasis to the autonomous commercial management of the harness and greyhound racing industries.

The harness and greyhound racing industries are each to have their own commercial board to exercise the strategic and commercial governance of the relevant code.

Each commercial board is to be independent of Government and will not represent the Crown. This is the basis on which the Thoroughbred Racing Board was established, and is consistent with Government racing policy to give greater autonomy to the minor codes of racing in relation to commercial decision making.

The pivotal features of the new structures are that the commercial boards are to be separate and independent bodies in their own right, and that they will each have an independent chairperson.

The two commercial boards will largely follow the structure of the 'commercial' component of the existing Boards except that:

- Each board is to have an additional member which would be the independent chairperson; and
- The greyhound industry commercial board is to have a further additional member to provide individual representation to the National Coursing Association and the Greyhound Breeders Owners and Trainers' Association.

The independent chairperson of each commercial board is to be a person with appropriate high level business skills. That person is to be selected by other members of the commercial board after a recruitment process conducted by external consultants, much in the same manner as the recruitment process for the chair of the Thoroughbred Racing Board.

Each bill provides that the independent chair cannot be a member of a committee of a race club, including in the 12 months prior to selection. If a member of a race club or a club employee, that person must suspend their membership or terminate their employment, prior to appointment.

Such protection against a conflict of interest is further strengthened by the provision in each bill which places a duty on each member of a commercial board to act in the public interest and the interests of the relevant racing code, as a whole. This is to overcome the issue of members acting narrowly in the interests of the body that nominated the member.

In addition, the existing informal arrangements by which board members sign confidentiality deeds upon appointment have been formalised by the provision in each bill which makes it an offence to disclose information acquired in the exercise of official responsibilities, except if it is for official purposes.

The bills also provide, if the commercial board so wishes, for the same person to serve as the independent chair and the chief executive officer. This provides significant flexibility for the purpose of containing costs, a matter which I will expand upon shortly.

Other members of each commercial board are to be representative of industry and participant groups along the same lines as the status quo. That is, representation from clubs and industry participants.

Both bills also require the relevant commercial board to seek the Minister's approval for borrowings of more than $1 million, or some other amount which may be prescribed. This measure is on the basis of an individual loan, or of an aggregate amount over a year. This is a safety valve measure to ensure that the new commercial boards act prudently.

Each commercial board is to be responsible for such matters as:

- Registration of race clubs

- Strategic development and business governance
- Distribution of TAB Ltd payments in accordance with the Racing Distribution Agreement
- Allocation of race dates
- Developing and reviewing policy in relation to breeding and grading or handicapping of racing animals.

The main elements of the bills reflect the wishes of the majority of industry stakeholders who made submissions to a recent review. That review, which I asked my department to conduct, was in relation to:

- The composition and activities of the Boards of HRNSW and the GRA, and
- Whether the present structure of HRNSW and GRA Boards is appropriate and effective.

The dual board structure recognises the priority of reform for commercial reasons. There is also a revamp of the functions of the two regulatory boards.

The bills contain provisions which strengthen the requirements in relation to codes of conduct and the disclosure of pecuniary interests by Board members. The ICAC has provided advice in relation to these matters.

The bills propose important reforms on the regulatory side.

At least one person of each of the three member regulatory boards must have legal qualifications, and the other two must have experience in one or more of the following areas:

- Management or administration
- Regulatory or policing
- Veterinary qualifications
- Working knowledge of the racing and wagering industry.

In addition, in keeping with protecting against conflicts of interest, the following persons are not eligible to serve on the regulatory boards:

- A person who is, or was, in the previous 12 months, a member of a committee of a racing club
- A member or employee of a racing club
- A person licensed by one of the controlling bodies
- A person with a financial interest in a racing animal

Each regulatory board is to be responsible for such matters as:

- Registration of racing animals and licensed persons
- Administration of the relevant Rules of Racing–except with some qualifications regarding commercial matters
- Ensuring the integrity of racing and associated wagering/and
- Drug testing
- Records management necessary to support such integrity functions.

The bills contain a number of other associated requirements. They are mostly of a transitional, consequential or start-up nature, and are necessary to:

- Facilitate the process of structured change management; and
- Ensure that there is continuity of regulatory and commercial functions during the transition period.

An important aspect of that restructure process is the need to ensure that all staff of the existing two boards are consulted about the changes.

Accordingly, the department has established a consultative framework which involves the staff, the Public Service Association, the Public Sector Management Office and the management of the two controlling bodies. Such an approach enables full discussion of any issues of concern relating to staff employment and entitlements.

All staff entitlements are protected by the bills. All existing staff are to be transferred to the new regulatory boards, thus preserving all public sector entitlements. Staff whose functions are transferred to a commercial board will, if they wish, be given preference for an equivalent position with a commercial board. Such preference will be available for 12 months.

Staff taking up such preference will be eligible for a special termination payment in recognition of the loss of public sector conditions of service. They will also be protected from being made redundant in the transferred position for 12 months.

Staff whose functions are transferred will not be compelled to transfer, nor will there be forced redundancies. The usual public sector redeployment arrangements will apply to the regulatory boards which will remain as statutory authorities.

The second stage of the restructure proposal involves examining the possibility of amalgamating the two new regulatory boards, that is, the Harness Racing Authority and the Greyhound Racing Authority.

The Government's decision to restructure the present control and regulation arrangements for the harness and greyhound racing industries indicates that such action must be preceded by a feasibility study which is to report back to Cabinet.

Such a feasibility study will closely scrutinise the possibility of efficiencies to be gained from economies of scale and the benefits in terms of staff recruitment, training and career development.

However, amalgamation will not be at the expense of the integrity of racing regulation. If savings can be made, their benefit will be applied to the racing industry by, for example, increasing prize money.

This restructure proposal represents a significant and major reform for the harness racing and greyhound racing industries. This will provide them with the opportunity of securing a viable future on their own merits, and in accordance with their own business and strategic acumen.

The separate and independent commercial boards will be able to focus exclusively on the day to day business arrangements, and also on strategic decision making to secure the future of the industry.

Both the commercial and regulatory functions will be re-invigorated and prepared for the challenges of the future.

The present reform is another of the many commercial reforms and achievements that the Minister for Gaming and Racing has been responsible for since 1995.

In 1996, it was the establishment of the Thoroughbred Racing Board. That Board is comprised of appointees that provide for industry wide representation, and an appropriate mix of commercial and regulatory experience.

In 1997, it was the privatisation of the TAB.

Each year since privatization the TAB has increased its payments to the racing industry. In the 1997-98 financial year it was $142 million. That has increased in the 2000-01 year to $183 million.

These increases are the lifeblood of the New South Wales racing industry. Without such increases our racing industry would not be able to compete and its viability and future would be in doubt.

In 1998, there was the first phase of the restructuring of Harness Racing NSW and the Greyhound Racing Authority. That initial change provided for greater industry representation on the boards of the controlling bodies, and the undertaking that there would be an evaluation of that new structure at the end of the three year term of each board. That evaluation has resulted in the proposal at hand.

In 1998 and 1999, it was the reform and update of the antiquated Gaming and Betting Act 1912, including the introduction of the offence for a person in New South Wales to bet with an overseas wagering operator on Australian racing events.

Such legislation minimises the threat from wagering operators outside New South Wales who seek to free-ride on this State's racing industry. These operators are happy to exploit our racing and poach our racing revenues without contributing to the cost.

It is with some urgency that the Minister for Gaming and Racing has led the debate regarding the practice by some jurisdictions of the licensing onshore of such large overseas wagering operators who contribute little to the racing industry. The Minister's intention is to prevent the opportunistic scavenging of our racing industry revenues, and therefore the destruction of many racing industry and country based jobs.

The Minister has also met recently with other Racing Ministers to discuss the best means by which to address these issues nationally and in a measured way.

Other important reforms have included:

- The review of the adequacy of sexual harassment policies, procedures and practices in the New South Wales racing industry. Consequently, the three controlling bodies have been directed to implement best practice policy and procedures. This has been recognised as such by other States and Territories and adopted as a national model.

- Significant tax reform for bookmakers. First in 2000 sports bookmakers received a reduction in taxes on certain sports bet types, and just recently the Minister announced that the 1% State turnover tax on racing bets was abolished.

- The introduction of a responsible wagering program which requires race clubs and TAB outlets to adopt gambling harm minimisation measures.

The measures put forward in this proposal are to enable, as mentioned earlier, the re-invigoration of the management and regulation of the harness and greyhound racing industries to ensure their future viability.

However, the opportunities provided by Government will only work if professional and capable people are nominated to serve on the commercial boards.

Gone are the days when it was sufficient to nominate a person merely on the basis that he is a good bloke and once owned a good horse or greyhound.

In the present environment, it is imperative to the survival of the harness and greyhound racing industries, which are facing increasing competition for the leisure and gambling dollar, that appointments are made on ability and merit. It is essential that professional persons of the highest calibre with business acumen and experience are appointed to the new commercial boards.

It is essential that once appointed the members of the new commercial boards each select an independent chairperson and chief executive with skills at a similarly high level.

I am therefore very pleased to be able to introduce the present proposal, as a part of a long list of reforms designed to modernise and bring commercial reform to the governance of the racing industry in this State.

I commend the bills to the House.

The Hon. JOHN JOBLING [8.35 p.m.]: The Opposition does not oppose the Greyhound Racing Bill and the Harness Racing Bill. The Greyhound Racing Authority and the Harness Racing Authority have indicated their support for these bills. They do not oppose the bills and are satisfied with the content and the approach taken in these bills. These bills follow the privatisation of the TAB, the Greyhound Racing Authority Act 1985 and the Harness Racing Act 1977, which were amended to separate the commercial and regulatory functions of the two boards. At the time the intent was to provide what could be described as greater industry participation and representation of participants. In April 2001 the Government at the time conducted a review of the composition and activities of the two boards. From my understanding, a further feasibility study will be undertaken.

The Greyhound Racing Authority and the Harness Racing Authority of New South Wales will be restructured under the provisions of these bills to separate the commercial from the regulatory activities of the boards. That desirable outcome will give a greater representation, something about which both authorities are happy, to give autonomous commercial management of the Greyhound Racing and the Harness Racing authorities. The boards will clearly follow the structure of the commercial component of the existing boards and will consist of five members, as proposed, including an independent chair. The regulatory boards will consist of three members. There are surprisingly few arguments against these bills. The Minister in the lower House indicated that the Government may accede to the foreshadowed amendments of the Opposition in the Committee stage.

Harness racing clubs and greyhound racing clubs, which are part and parcel of country activities, have a dedicated following in country New South Wales. Country people are concerned about the long-term outcome and viability of their reasonably small clubs. They do not attract large numbers of participants or punters through the gate. From time to time they struggle, but they provide a commercial activity and a bit of colour to the various country areas in which they exist. Their officers are dedicated and those who attend the race meetings are loyal. I will do what I can to ensure continued participation in country areas where these clubs exist. The clubs realise that moving to a commercial board will create certain problems. The clubs are aware that a 10.45 per cent share of takings is at stake, even though it is not enshrined in a legally binding agreement. Country harness racing is not a signatory to the intracode agreement. Therefore, when one considers the numbers that are before us, there is no guarantee that country racing in these two domains will have any representation on the board. Obviously, that is extremely concerning.

I know the time and effort put into both the harness and greyhound racing clubs in my area of Muswellbrook. The arguments suggest that we must consider a number of things. Both the Greyhound Racing Authority and Harness Racing New South Wales have indicated that they are happy with and agree with the general thrust of the legislation. It is probably a good move to place both codes of racing on a greater commercial footing—they will continue to succeed only if they are soundly based commercially. I understand that both authorities accept that it will be necessary—this week, next month or next year—to make some hard commercial decisions. It is in the interests of the two racing bodies to accept it. They accept that some decisions will be made on a purely commercial basis. They equally accept that this may have some adverse effect on smaller racing clubs in country areas. That approach is very sensible and thoughtful, and tends to ensure their future existence. The Opposition is clearly aware of the potential threat this could pose, which is the basis on which we will move the amendments to ensure representation of country racing interests on a commercial board.

Most people will accept this as a highly desirable outcome for a statewide industry that employs probably more people than any other industry in New South Wales. As the legislation points out, the

appointment for each board is to be three years. It also sets out the responsibilities of each board, including registering racing animals—dogs and horses—and devices to persons, administering the relevant rules of racing, ensuring the integrity of racing and associated wagering, and testing for drugs. The Minister has indicated that he proposes to examine the feasibility of amalgamating the two regulatory boards that these cognate bills will bring into existence. It is my understanding that the Minister has been quite fair about it and has given an undertaking that any attempt of a proposed amalgamation will not occur if it is to be at the expense of the integrity of racing regulation.

The Opposition is concerned about a rumour in the industry. I would appreciate it if the Minister could reconfirm the Government's intention: will the chairperson of Greyhound Racing New South Wales or Harness Racing New South Wales be able to hold the position of chief executive officer concurrently? It has been suggested that it would be advisable to appoint one person to the two positions. Although it may not be the intention or, indeed, the preference of the board to follow this practice, the existence of this option has caused a degree of concern throughout the country, particularly, and considerable anxiety. Support for the bill exists. We have consulted with the Greyhound Racing Authority and Harness Racing New South Wales, and we agree that the general thrust of the bill is supported and welcomed. It will place both codes of racing on what is clearly a commercial footing. They need to do this for their survival. We are pleased to see that it is happening.

We believe the Government has it right: two representative bodies in the industry. However, if it is purely a commercial decision—even though it may be acceptable in urban areas that have bigger clubs—we must ensure that it does not affect country areas. Obviously, we have received a lot of correspondence from many people in this area. If responsible people in the industry are not satisfied that the industry is being advanced by this mechanism we will raise those problems in the House. The two amendments deal with representation from country racing clubs on the commercial board of each code. At this stage it is my intention to move to both the Greyhound Racing Bill and the Harness Racing Bill an amendment that would provide that two persons be nominated by the greyhound or harness racing club other than those referred to in the appropriate paragraphs, with one of those nominees being nominated to represent the TAB and the other being nominated to represent country racing.

The amendments overcome the major problems with the bills. The Minister for Gaming and Racing said that he has no problems with the amendments and that the Government is prepared to support them. I refer to *Hansard* of 5 June. In his reply to the second reading debate the Minister noted the comments of the honourable member for Lachlan, who adequately and comprehensively dealt with this legislation. The Minister then said:

> ... I have no problem with the amendments to be moved in the other place, which will achieve the same end that the Government intends and are representative of the country view.

With those brief comments, I indicate that the Opposition does not oppose the bills but will move the two foreshadowed amendments in Committee.

The Hon. IAN COHEN [8.51 p.m.]: The Greens are pleased to support the Harness Racing Bill and the Greyhound Racing Bill. They will replace Harness Racing New South Wales and the Greyhound Racing Authority with new regulatory bodies. Both industries will now have two separate regulatory bodies, separating disciplinary matters from other matters. The non-disciplinary regulatory bodies will be responsible for, in the case of greyhound racing, registration of greyhound racing clubs, greyhound trial tracks and the cancellation of registration on grounds other than disciplinary grounds and for policy on industry development; and, in the case of harness racing, registration of harness racing clubs and harness racing associations, and the cancellation of registration on grounds other than disciplinary grounds and policy industry development. The Greens are pleased with the assurance given by the Minister that all staff transferred or otherwise as a result of the new regulatory system will have all their staff entitlements protected and preserved and that there will be no forced redundancies as a result of the bills. The Greens are pleased to support the bills.

The Hon. RICHARD JONES [8.52 p.m.]: I have a letter from a former board member of Harness Racing New South Wales expressing a number of concerns about the legislation. He wrote:

> While the Industry acknowledges there is an ongoing need for reform, our concern is not only with the content but with the process in which this Bill appears to have been "rushed" into being and with the blatant lack of consultation with the Industry as a whole.

He noted a number of questions about the Harness Racing Bill that he wished to highlight. They were:

Splitting the current Board into two, with the new Commercial Board appearing to have no assets.

The obvious increased (and unaffordable) cost to the Industry that two Boards will generate which will result in prizemoney reductions.

The Legislation was "hidden" from the Industry.

Amalgamation of horses and greyhounds is "chalk and cheese" whereas thoroughbred and standardbred horses is a compatible amalgamation.

Coupled with this is the fact that participant groups who are members of the inaugural Industry Advisory Board have inexplicably been excluded from this Board in the new Legislation, something which is against the Minister's "policy" of participants involvement.

The former board member asked a number of questions, which I forwarded to the Minister. I have received answers to those questions, and I put some of those on the record. The first question was:

The Harness Racing Industry, from the Minister's perspective, has probably enjoyed the best period of stability since the Government took office and certainly since Mr Face has been the Minister. Why then has the Minister decided that a restructure of the Industry was necessary?

The answer by the Minister was:

The restructured Harness Racing New South Wales and GRA Boards commenced three year terms on 1 January 1999. At that time the Minister indicated that reviews would be undertaken towards the end of the restructured Boards' three-year terms to evaluate the impact of the structure.

The 1999 restructure occurred in the environment that the Government had deregulated the management and control of the thoroughbred racing industry, and that its policy direction was that the racing industry should be given greater commercial autonomy.

Accordingly, in April 2001 the Minister directed that reviews be undertaken of Harness Racing New South Wales (HRNSWW) and the Greyhound Racing Authority (GRA) in relation to the:

1. Composition and activities of the HRNSW and GRA Boards; and

2. Whether the present structure of the HRNSW and GRA Boards is appropriate and effective in terms of the objects of each Board's enabling Act.

Submissions to the review were sought by notices placed in the press and industry periodicals over the weekend of 28 April 2001 and the closing date for submissions was 25 May 2001 (Daily Telegraph, Trotguide and the Greyhound Recorder).

Thirty one submissions were received on GRA matters, and thirteen submissions were received on HRNSW matters.

In addition:

- the Department wrote to all harness and greyhound racing clubs, and related industry associations, to invite submissions.

- there were extensive discussions with the Chairs of Harness Racing NSW and the Greyhound Racing Authority.

The two Bills accord with the outcomes obtained from the consultation and policy development process outlined above.

The former board member asked this question:

Upon whose advice did the Minister act, and what knowledge do they have about contemporary issues in the Harness Racing Industry which places them in a position to give that advice?

(Note that neither the full Board of Harness Racing NSW, nor the Chief Executive of HRNSW were consulted prior to the reform package being sent to Cabinet and that Harness Racing NSW was actively discouraged from putting in a submission in regard to the Minister's reform proposals).

The answer supplied by the Minister is:

See answer to question 1.

Also:

- the Chairperson and Chief Executive of each of the two codes were consulted during the course of the preparation of papers for Cabinet; and each of the two Boards were provided with a confidential briefing about, and access to, an exposure draft of the Bill relevant to their code of racing.

The input from the formal review process, the consultations outlined above and the Government's policy direction that the racing industry should be given greater commercial autonomy, were the basis of the policy development for the Bills.

I will not read all of this person's questions, but his third question was:

> What does the Minister perceive to be the problems in the Harness Racing Industry and how will the restructure overcome those problems?

The Minister responded:

> Without repeating the substance of the Bill, the restructure provides the opportunity for the two industries to—as they have sought—achieve a right to exercise commercial and strategic management of their respective industries totally independent of Government direction.

I will not take up the time of the House now reading onto the record a number of other questions and the responses from the Minister. I will send those responses to the former board member. The Minister has gone to some length to answer the questions posed by that person. I would point out that the Council of Social Service of New South Wales [NCOSS] fully supports the legislation. Alan Kirkland, the Director of NCOSS, wrote to my office a few days ago saying:

> I am writing to advise that the Harness Racing Bill has the strong support of NCOSS. We believe that in addressing problem gambling it is vital to ensure that the regulatory structures for the gambling industry are strong, independent and appropriately balanced. We believe that the Bill, which will establish two separate bodies—a Regulatory Board and a Commercial Board—is essential to ensure the integrity of the regulatory process.

I support the legislation based on that advice and the advice from the Minister.

The Hon. MALCOLM JONES [8.57 p.m.]: I simply wish to put on the record that the Harness Racing Bill is largely the result of a report of the Regulation Review Committee completed in 2001. Many of the recommendations contained in the report have been taken up in this legislation. I trust it will go a long way towards remedying many of the problems that the Regulation Review Committee uncovered. There were a number of such problems. However, the primary problem was that a trainer who presented for racing a horse with a reading of 35 millilitres of total carbon dioxide per litre of blood—with an additional tolerance of 1.2 millilitres—was automatically disqualified and prevented from earning a livelihood from the industry for 12 months. That is because the trainer was deemed to have submitted for racing a horse that was not fit for racing.

The stewards who conducted inquiries into such matters were the policeman, the judge, jury and sentencing authority. Trainers were automatically found guilty. Clause 33 of the Harness Racing Bill establishes a new Harness Racing Appeals Tribunal to hear such appeals. I trust, based on my knowledge of the harness racing industry, that this bill will go a long way towards resolving the problems uncovered by the Regulation Review Committee. As far as the Greyhound Racing Bill is concerned, at this stage I have no comment. I support the Harness Racing Bill.

The Hon. MICHAEL COSTA (Minister for Police) [8.59 p.m.], in reply: I thank honourable members for their contributions to this debate. The proposed legislation provides an opportunity to reconstitute the current composition and structure of the controlling bodies for harness racing and greyhound racing to provide for a separate regulatory board and an independent commercial board for each of the harness and greyhound racing codes. Each commercial board is to exercise the strategic and commercial governance of the relevant code. Each such board is to be independent of the Government and will not represent the Crown. Each such board is to have an independent chairperson. This restructure proposal represents a significant and major reform for the harness racing and greyhound racing industries. It will provide them with the opportunity of securing a viable future on their own merits and in accordance with the business and strategic acumen of people drawn from, or appointed by, the two industries.

While the priority for reform is on the commercial side, that is not to be at the expense of the regulatory functions of the controlling bodies for the harness and greyhound industries. Indeed, the statutory basis for the two regulatory boards has also been reinvigorated, particularly with regard to managing any conflicts of interest and also by prescribing qualifications for board members. The Minister for Gaming and Racing responded to issues raised by the Opposition in the debate last week. I will respond to them in a similar vein. It is understandable that people are uneasy about change and that they are apprehensive about reforms that they might find challenging. Nevertheless, let me reiterate the Minister's assurances that the reforms proposed in these bills give the harness and racing industries the opportunity to take charge of their future, free of government interference and in accordance with the best strategic and business planning that those industries can bring to bear to the task.

The cost of the proposal has been the subject of considerable speculation and misinformation. The bills contain many significant measures to ensure that the boards operate at optimum efficiency. For example, each

bill provides that a commercial board may, if it wishes to do so, appoint the same person as the independent chairperson and chief executive officer. Further, such a commercial board may determine, after it assesses its functions, that it does not need a chief executive officer and may recruit appropriate executive staff at a more modest level. Such staffing decisions are a matter for each commercial board to determine according to its priorities and vision and, of course, the ability of the industry to afford such measures. Another important cost control measure is the cap on borrowings by each commercial board. The bills provide that individual loans, or the total in a 12-month period, which exceed $1 million are subject to ministerial approval. That threshold can be varied by regulation if that is considered necessary.

On the regulatory side, the budget of both regulatory boards must be approved by the Minister before industry funding is released for that purpose. That provides for scrutiny of the economy of the expenditure of the two statutory bodies and also ensures that adequate funding is provided to assure the integrity of harness and greyhound racing, and associated wagering. Further, close consideration will be given to avoiding duplication of common services to both boards in each code of racing. Such common business centres—for example, accounting, human resources and information technology [IT]—should, wherever possible, remain with the regulatory board and be subject to service level agreements between a commercial board and a regulatory board. There is no need to have two accounting sections, two IT centres, two human resource centres, et cetera. Such services can be provided by one organisation to the other without compromising the integrity of the separation of the commercial and regulatory functions. Such an approach is also aimed at maximising the operational efficiency of each organisation and minimising disruption to staff employment.

The Minister for Gaming and Racing has also addressed confusing misinformation regarding the amalgamation of the two new regulatory boards. The second stage of the proposal involves examining the possibility of amalgamating the two new regulatory boards, that is, the Harness Racing Authority and the Greyhound Racing Authority. The press release announcing the Government's decision to restructure the present control and regulation arrangements for the harness racing industry and the greyhound racing industry indicates that such action must be preceded by a feasibility study which is to report back to Cabinet.

Such a feasibility study will closely scrutinise the possibility of efficiencies to be gained from economies of scale and the benefits of staff recruitment, training and career development. However, amalgamation will not be at the expense of the integrity of racing regulation. If savings can be made, their benefit will be applied to the racing industry by, for example, increasing prize money. The proposed changes are of a structural nature and are designed to improve the commercial and regulatory governance of harness and greyhound racing. They also, by the way, improve the bottom line of the administration costs of the industry and, therefore, provide the possibility of more funds being distributed to industry participants.

Another issue that has been raised is the concern that certain sectors of each industry, such as country clubs or industry participants, will lose their representation on the new boards. Such concern is unwarranted, as the future representation of these two groups will continue at current levels. That is to say, each board now has a country club or non-TAB representative as well as an industry participant representative. They will have the same representation on the new commercial boards. On this issue, the Minister acknowledges that the Opposition foreshadowed an amendment which would give certainty that each commercial board must have a country representative. The Minister indicated support for that proposal, which formalises the present arrangements and clarifies that the non-TAB club representative is in fact the representative of country race clubs.

The claim has been made that the new commercial boards are not answerable to anybody. While it is true to say that they will be totally independent of the Government, that does not mean that they are not accountable. The first and most significant measure of accountability is that they are accountable to the industry group that nominated them to the board. They are also under a statutory duty to act in the best interests of the industry and in the public interest. Each bill imposes that duty on its commercial board. They are also under a duty to act in accordance with the racing distribution agreements between the racing industry and TAB Ltd, the aim of which is the commercial success of the racing and wagering industries. The Minister also indicated last week that he believed that the two industries were at a significant crossroad. He expressed the hope that they recognise this as an opportunity for them to demonstrate the maturity and business acumen that is appropriate to the needs of securing the future viability of their industries.

In particular, he asked that the relevant industry bodies give close consideration to the persons they nominate to the new commercial boards. The future of these industries rests on the business skills and acumen of the members of the new boards. It is time for these industries to take responsibility for their economic future.

In the interests of securing appropriate financial returns, there has been discussion about the possibility of varying the arrangements by which owners and trainers provide racing animals for racing. Any such proposals would be a matter for the new commercial boards to consider in the usual way for accessing business proposals. It is an industry management issue: it is not a Government matter. Further to the proposal to appoint the same person as chairman and chief executive officer, the legislation merely provides the flexibility for both industries to adopt that course of action. The final decision will be one for the industry and not for the Government. I commend the bill to the House.

Motion agreed to.

Bills read a second time.

In Committee

The CHAIRMAN: Order! The Committee will deal first with the Greyhound Racing Bill.

Part 1 agreed to.

Part 2

The Hon. JOHN JOBLING [9.10 p.m.]: I move:

Page 4, clause 8 (1) (c), lines 26-29. Omit all words on those lines. Insert instead:

(c) two persons nominated by greyhound racing clubs (other than those referred to in paragraphs (a) and (b)), with one of those nominees being nominated as a representative of TAB clubs and the other being nominated as a representative of country racing,

In debate on the second reading of this bill I made the Opposition's position clear. Concerns have been expressed about the problems facing country racing. The Government indicated that it supports this amendment in general terms, which will place country racing in an equitable position and ensure its future. I commend the amendment to the Committee.

The Hon. MICHAEL COSTA (Minister for Police) [9.11 p.m.]: The Opposition has proposed an amendment to the bill that will ensure that a member of the commercial board is designated as a country club representative. The Minister for Gaming and Racing indicated last week that the Government was supportive of such an amendment, particularly after strong lobbying from Country Labor branches. This amendment will formalise existing arrangements and ensure that the non-TAB club representative is essentially the country representative. Accordingly, it will give certainty to that arrangement. The valuable role of country racing and country race clubs is recognised by the Government. As I said earlier, after strong representations from Country Labor, the amendment is supported.

Amendment agreed to.

Part 2 as amended agreed to.

Parts 3 to 8 agreed to.

Schedules 1 to 6 agreed to.

Title agreed to.

The CHAIRMAN: Order! The Committee will now deal with the Harness Racing Bill.

Part 1 agreed to.

Part 2

The Hon. JOHN JOBLING [9.13 p.m.]: I move:

Page 4, clause 8 (1) (b), lines 26-29. Omit all words on those lines. Insert instead:

(c) two persons nominated by harness racing clubs (other than New South Wales Harness Racing Club Ltd), with one of those nominees being nominated as a representative of TAB clubs and the other being nominated as a representative of country racing,

As I stated earlier, this amendment will ensure that country racing remains relevant. The Government accepted the Opposition's amendment to the Greyhound Racing Bill. I hope that it will also accept my sensible amendment, which supports country racing, to the Harness Racing Bill.

Reverend the Hon. FRED NILE [9.14 p.m.]: The Christian Democratic Party supports this amendment. The Christian Democratic Party has a lot of contact with the harness racing industry and I believe the amendment will help those in the industry who will be affected by the bill.

The Hon. MICHAEL COSTA (Minister for Police) [9.15 p.m.]: As previously stated, following strong representations from Country Labor, the Government supports the Opposition's amendment.

Amendment agreed to.

Part 2 as amended agreed to.

Parts 3 to 8 agreed to.

Schedules 1 to 6 agreed to.

Title agreed to.

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL

Bill introduced and read a first time.

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council [9.19 p.m.]: I move:

That this bill be now read a second time.

The Statute Law (Miscellaneous Provisions) Bill continues the well-established statute law revision program that is recognised by all honourable members as a cost-effective and efficient method of dealing with amendments of the kind included in the bill. The form of the bill is similar to that of previous bills in the statute law revision program. Schedule 1 contains amendments arising from policy changes of a minor and non-controversial nature that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending bill.

The schedule contains amendments to 28 Acts. I will mention some of them to give honourable members an indication of the kinds of amendments in the schedule. Schedule 1 amends the Children and Young Persons (Care and Protection) Act 1998 in a number of respects. Many of the amendments are made to ensure consistency of terminology or consistency with other provisions of the Act or to clarify the meaning of a term. Another amendment to that Act relates to the grounds on which the Children's Court may make a care order in respect of a child or young person. That amendment makes it clear that the court may do so if the child or young person is deemed under section 171 of the Act to be in need of care and protection. This can occur if the child or young person is still living in unauthorised out-of-home care despite a request from the Director-General of the Department of Community Services that the child or young person be removed from that care.

Schedule 1 also amends the Conveyancing Act 1919 in relation to distress for rent—that is, the practice of a landlord to seize the goods of a tenant whose rent is in arrears. That practice was abolished by the Landlord and Tenant Amendment (Distress Abolition) Act 1930, which also preserved the general right of a person to whom rent is owed to recover the rent by court action. The amendments to the Conveyancing Act preserve the effect of the Landlord and Tenant Amendment (Distress Abolition) Act 1930 and so permit the repeal of that Act by schedule 3.

Schedule 1 also amends the Dental Practice Act 2001. The amendment provides that persons elected as members of the Dental Board constituted by the Dentists Act 1989 at the election that is required to be held in July 2002 under that Act are to serve the balance of their terms, unless sooner removed by the Governor, as

members of the Dental Board constituted by the Dental Practice Act 2001. That Act is proposed to commence this year some time after July. The amendment will remove the necessity to conduct another election—under the 2001 Act—shortly after the July election. Schedule 1 also amends the Mines Inspection Act 1901 so as to permit the Chief Inspector of Mines to delegate his or her functions under the Act to any inspector of mines. At present the delegation can be made only to the Deputy Chief Inspector of Mines or senior inspectors of mines.

Schedule 1 also amends the Pesticides Act 1999. The amendments repeal a provision that provides that it is a defence to a prosecution for the alleged offence of using a pesticide in contravention of an approved label for the pesticide if the accused establishes that he or she did not contravene the relevant instructions on any other approved label for the pesticide. The amendments will ensure that any more stringent requirements imposed by a second or subsequent approved label for a pesticide can be enforced. However, they do not affect the defence afforded to an accused who establishes that he or she complied with the requirements of the approved label appearing on the pesticide container that was actually used in the commission of the alleged offence.

Schedule 1 also amends the Public Authority (Financial Arrangements) Act 1987 so as to ensure that statutory State-owned corporations may obtain the benefit of a statutory guarantee under section 22A of the Act. The amendment provides consistency with the position of company State-owned corporations in relation to the statutory guarantee. There are many other important features of the bill, and I commend it to the House.

Debate adjourned on motion by the Hon. Don Harwin.

HEALTH RECORDS AND INFORMATION PRIVACY BILL

Bill introduced and read a first time.

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [9.30 p.m.]: I move:

That this bill be now read a second time.

I am pleased to bring before the House the Health Records and Information Privacy Bill. The bill is a culmination of extensive consultation on health privacy issues begun by the Government in June 2000. I consider the legislation to be an important step forward in establishing clear rights and protections for the community in relation to the management and accessing of personal health information.

As honourable members will be aware, debates about the right to privacy and the right to privacy of information have been increasing in the community over recent years. This debate has often centred on the potential misuse of health information, which can include sensitive and personal details about a person's health or mental health. Much community concern has also been generated by the opportunities offered by new technologies to link the records of individuals held by different agencies or organisations.

The Health Records and Information Privacy Bill is a result of the recommendations of the Ministerial Advisory Committee on Privacy and Health Information. This independent committee, chaired by the New South Wales Privacy Commissioner, Mr Chris Puplick, reviewed issues relating to the privacy of health information in the context of the development of the linked electronic health record. The committee concluded that a strong regulatory regime was essential to protect health information and address community concerns about the privacy risks associated with electronic records. As such, it recommended the introduction of a Health Records and Information Privacy Act in New South Wales.

The bill has been drafted in accordance with the recommendations of the committee, and establishes a comprehensive regime for the management and protection of health information across both the private and public sectors in New South Wales. The development of this legislation has also been guided by three additional principles. The first is to recognise obligations already imposed on service providers and health service providers by the existing laws, such as the Federal Privacy Act. The second principle is to draw together the best elements of existing privacy legislation at a local, national and international level. In this regard, particular attention has been given to the obligations currently imposed on the public sector in New South Wales under the Privacy and Personal Information Protection Act, as well as the reforms recently introduced in Victoria in the Health Records Act.

The experience to date in other jurisdictions has been useful to the development of this bill. It reinforces the need for a flexible and adaptive legislative scheme capable of accommodating the complexities arising in the management of health information. The third principle is the aim to ensure a readily accessible and usable set of principles having due regard to both individual rights and the special needs arising in the management and use of health information. In this regard the bill endeavours to strike an appropriate balance between the desire of consumers for privacy on the one hand, and the need to safeguard the health and safety of individuals and the public, and promote safe and effective health service delivery on the other.

I will now give a general overview of the bill. Under clauses 5 and 6 "health information" is defined as information about an individual's health or a health service obtained by an individual, and from which his or her identity can reasonably be ascertained. Health information includes information or opinions about a person's physical or mental health and information collected in relation to organ donation or genetic information, as well as information about a health service provided to a person. "Health service" is defined to cover a broad range of services including medical, hospital and nursing services, as well as services provided by both registered and unregistered health practitioners.

The key provisions of the bill are contained in 15 health privacy principles. Health privacy principles 1, 2, 3 and 4 deal with the collection of health information. Principle 1 requires that information must not be collected unless it is for a lawful purpose directly related to a function or activity of the organisation. Principle 2 requires that the collection of information should be relevant and accurate and should not intrude unreasonably on the personal affairs of an individual. Principle 3 states that information should, unless it is unreasonable and impracticable to do so, be collected from the individual to whom it relates, while principle 4 outlines the information that must be given to a person when collecting information.

Principle 5 requires that information can only be kept for a reasonable period of time and must, while held, be stored securely. Principles 6, 7 and 8 establish an individual's right to have access to personal health information, and a right to have that information amended. Principle 9 requires holders of health information to ensure health information they propose to use is accurate, complete and up to date. Principles 10 and 11 set out the list of purposes for which holders of health information can use and disclose health information. Principle 12 establishes limits on the use of identifiers. Principle 13 allows people to access health services anonymously, provided it is lawful and practicable to do so. Principle 14 sets out specific circumstances and requirements for the cross-border flow of data.

In addition, and for the first time in Australia, health privacy principle 15 also establishes specific obligations in relation to the linkage of medical records via an electronic health records system. As honourable members will be aware, while there are strong arguments for the considerable benefit that will flow from linked systems, it also remains important that the individual patient retain control over the decision to participate in any such linkages. Health privacy principle 15 therefore establishes this right in law, requiring an organisation, whether public or private, to obtain an express consent from a person before they can be added to a linked system of health records.

The bill also provides for the handling and management of complaints about breaches of the health privacy principles. Complaints about public sector agencies will be dealt with through the complaints mechanisms already established under the Privacy and Personal Information Protection Act. This legislation, which has been operational in the public sector for nearly two years, regulates the public sector's management of all personal information. The complaints mechanisms under that Act include an internal review by the agency in question, a role for the New South Wales Privacy Commissioner in assessing complaints, and a right to take an alleged breach of privacy to the Administrative Decisions Tribunal.

Part 6 of the Act creates a complaints regime for the private sector, establishing the New South Wales Privacy Commissioner as the main complaints-handling body, providing for that office to receive, investigate and, where possible, conciliate complaints. Where the Privacy Commissioner concludes that there is a clear breach of a health privacy principle, an individual will also have the right to take his or her complaint to the Administrative Decisions Tribunal. In determining a complaint, the tribunal will have the same powers, irrespective of whether the complaint is made against a private or public sector body. This will include the power to order the respondent to refrain from the conduct in question, remedy a loss resulting from the breach and impose a monetary penalty.

An exposure draft Health Records and Information Privacy Bill 2001 was released by the Department of Health in November 2001 and circulated widely to health interest groups and stakeholders. The intention was

to provide the community with an opportunity to consider the proposed legislation and allow the Government to revise and adjust the bill in response to any concerns raised during the consultation period. I am pleased to report to the House that the consultations over the last six months have been valuable, with the submissions addressing a broad range of issues and highlighting a number of areas for further review. The process has allowed the provisions of the exposure draft bill to be revised and simplified to make the final Health Records and Information Privacy Bill 2002 stronger and more practical legislation.

I will now turn to some of the issues raised during the consultations. The relationship of the bill to the existing private sector provisions of the Federal Privacy Act was one matter raised in various submissions. This Government considers consistency in the area of privacy legislation to be highly desirable, particularly across the private and public sector, between State and Territory jurisdictions and at a national level. It is for this reason that the Health Records and Information Privacy Bill covers both the private and public sector in New South Wales, that New South Wales has had particular regard to new legislation on privacy in Victoria, and that the bill was developed, and has been further refined during the consultation period, to ensure general consistency with the Federal Privacy Act.

There are two reasons for this last approach. First, it is important to ensure that the State legislation operates within the Federal Constitution, and to address any concerns of possible constitutional invalidity. Second, from an operational perspective it is also important to ensure that the Health Records and Information Privacy Bill will not impose additional and unjustifiable burdens on the private sector, above and beyond the obligations already imposed under the Federal Act. Having due regard to these concerns, a number of adjustments have been made to the exposure draft bill, to bring it more into line with the Federal Act. Many of the changes were a simple readjustment of language and finetuning.

The most notable change relates to employment information. As honourable members may be aware, certain defined "employment records" are exempt from the Federal Act. During the consultation there was concern that without a similar exemption, the ambit of the State legislation and the potential burden on the private sector was being considerably expanded. To address this concern, clause 5 of the bill, which defines "personal information", now excludes employee records as defined under the Federal Privacy Act. I am aware that some privacy advocates have misgivings with such an exemption but they consider that while the Federal Act retains the exemption, New South Wales should also adopt it to minimise inconsistency and confusion for the private sector.

The consultation period also provided the opportunity for the provisions of part 4 and part 6 to be streamlined and simplified. In particular, in part 4 the specific obligations on the private sector in relation to retaining, amending and granting access to records have been revised to recognise other legal obligations. The timeframes imposed in that part have also been standardised. In part 6 the provisions relating to access to the Administrative Decisions Tribunal have been simplified to allow procedural issues to be addressed through the tribunal's own legislation.

Provisions have been added to ensure that matters already addressed and litigated under the Federal Privacy Act will not be relitigated at the State level. Clause 48 of the bill now prevents the tribunal from hearing a matter that is currently before the Federal Privacy Commissioner, or a matter on which the Federal Commissioner has made a determination. Clause 43 also gives the State Privacy Commissioner a discretion to refuse to deal with such a complaint.

The monetary penalty provisions in clause 54 of the bill have also been varied to recognise that corporations have considerably greater capacity than an individual to pay a fine. While a penalty of $40,000 will be available against a corporation, the penalty for an individual respondent will be $10,000. The change has been made in response to concerns raised on behalf of individual health service providers. As honourable members may be aware, various other pieces of health legislation, including the Medical Practice Act, apply different levels of penalties on corporations and individuals, and such a solution would also appear reasonable in this case.

There is one final, broad policy proposal that was raised during the consultations, which I would now seek to address. A number of submissions suggested that the legislation should include schemes for compulsory compliance audits. The view expressed in these submissions was that it was inadequate to rely solely on a complaints-based regulatory system to ensure compliance, particularly when dealing with complex structural matters such as security and linkage of records. It was argued that compliance mechanisms would enhance both cultural change and community confidence in the regulatory regime and electronic systems developed under it.

While these arguments are persuasive, the Minister was also aware of other equally valid concerns suggesting a more cautious approach to compliance procedures. The issues to be considered here are complex and, while European legislation is well developed in this area, the issues have not been addressed in an Australian jurisdiction before. They also have the potential to impose a financial burden on both the private and public sectors in complying, suggesting that before progressing such a policy, extensive consultation would be required.

As such, the Minister is not proposing to introduce in this bill provisions requiring the conduct of compliance audits or, indeed, a compliance approach to enforcement of the provisions of the Act at this time. The Minister is, however, prepared to recognise that as policy and practice develop in the area of privacy legislation, such an approach may well merit consideration. To this end, the Minister is proposing to include in the bill a power for regulations to be made to establish such processes. This will enable further detailed consideration of any such proposal prior to its introduction. It will also ensure consideration of the costs as well as the benefits of compliance requirements, and will ensure that any proposals are subject to a regulatory impact statement process that will include extensive consultation with affected stakeholders.

At this point I emphasise that the Government recognises that ongoing education will be one of the keys to the ultimate success of this legislation. In this regard NSW Health will conduct an extensive education program in the public sector. The training programs will be developed in conjunction with the Office of the New South Wales Privacy Commissioner, which will also provide information and training for the private sector.

I turn now to some of the consequential amendments to the Privacy and Personal Information Protection Act as proposed in schedule 3 to the bill. During the consultation issues were raised in relation to some of the procedural and technical provisions of the bill, which were equally relevant to the Privacy and Personal Information Protection Act. As such, the opportunity has been taken in this bill to make some consequential amendments to that Act. Each of the amendments is relatively minor, and reflects the substantive provisions of the Health Records and Information Privacy Bill.

Before concluding I thank the individuals from a range of community, business and professional organisations who made submissions on the exposure draft bill. I particularly thank the Office of the New South Wales Privacy Commissioner for its extensive assistance and advice in the development of the bill and throughout the consultation process. I also thank the representatives of various stakeholder groups, particularly those representing consumers and health professionals, who gave considerable time to Department of Health officers in commenting and advising on the legislation. The Minister believes that their assistance and support will ensure that the Health Records and Information Privacy Bill will be a sound base on which to take the regulation of health information into the future. I commend the bill to the House.

Debate adjourned on motion by the Hon. Don Harwin.

CRIMES AMENDMENT (BUSHFIRES) BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. RICHARD JONES [9.48 p.m.]: I support the Crimes Amendment (Bushfires) Bill. It has been said already that section 195B of the Crimes Act 1900 provides for a penalty of up to 10 years imprisonment for maliciously damaging a property by the use of fire or explosives. Under section 196B the penalty rises to 14 years if the property is damaged with the intention of injuring a person. Under section 198 the maximum penalty is 25 years imprisonment for a person who maliciously damages property with the intention of endangering life. So the legislation is pretty well in place to penalise those who recklessly cause fires. We were all quite shocked by the Christmas bushfires last year when many homes were lost. That was a tremendous tragedy for the owners. The skies of Sydney were dark for days after that.

There was nothing very much that Commissioner Koperberg and his Rural Fire Service or the New South Wales Fire Brigades could do about that, because the fires were so severe. Some areas were burnt more than once—some up to three times. Some fires went through at a slower pace and at a lower level, and then came back through the treetops. Some areas were incredibly severely burnt out. We were all most grateful to the many hundreds of volunteers who spent their Christmas and subsequent holiday period fighting bushfires and trying to save people's homes, possessions, and domestic pets and livestock. Many tragic stories appeared on

television and radio and in the press. Fortunately, many of us were not affected by it but many people we know were, including people within this building. We applaud the firefighters, both men and women, not just from this State but from all over, who spent their time and risked their lives to help people save their homes, their property and their stock. It was a selfless sacrifice by them. It showed that the Anzac spirit is still alive and well throughout Australia.

A Senior Counsel to whom I recently spoke about this matter told me that too many new homes are extremely vulnerable to bushfires. He said that some code should be in place to prevent building on ridge lines, particularly where fires can sweep up and burn houses on the edge of the ridge lines. Flying over Sydney one can see that many ridge lines are built out, and those homes are extremely vulnerable to bushfires. Some of those homes will be hit by bushfires in the future, and there will be very little one can do about that, given the ferocity of the fires that we experienced last Christmas and that we will no doubt face again in a few years, regardless of the amount of hazard reduction undertaken in the meantime.

Over the weekend my wife and I were in the Blue Mountains. Yesterday we passed through Wentworth Falls and Leura, along a road parallel to the main road. In that short stretch of a few kilometres we saw houses that are very vulnerable to bushfires. It worried us to look at those houses and wonder how they would cope if a bushfire came up the gully. The owners would have very little chance of saving their homes. They are vulnerable, even if they fill their gutters with water, close the house up, or keep their hoses turned full on.

It is all very well to talk about hazard reduction and the impact that can have, but Commissioner Koperberg has a good handle on this. He believes that if we continually hazard burn we will have very little biodiversity left. During the inquiry that General Purpose Standing Committee No. 5 held two years ago into the New South Wales Rural Fire Service evidence was given that some areas suffer worse for being burnt, because it leaves fire-vulnerable vegetation. Conversely, some areas that are not burnt are more resistant to fires because the rainforest tends to grow back and helps to prevent bushfires spreading.

The inquiry into the New South Wales Rural Fire Service was very thorough. The Hon. Malcolm Jones was a member of the committee and he produced a minority report calling for more hazard reduction. However, the majority of the committee members considered that Commissioner Koperberg's leadership was good and that hazard reduction was well handled. The Hon. Tony Kelly represented the Labor Party on the committee and the Hon. R. T. M. Bull, an extremely good former member of this House, was also a member, as were the Hon. Ron Dyer, the Hon. Johno Johnson and the Hon. John Jobling. It was a very good committee. The committee made a number of recommendations. Recommendation No. 13, which was supported by all members other than the Hon. Malcolm Jones, was:

> … that hazard reduction burns continue to be based on best scientific knowledge of the effect of burns on vegetation types to reduce the risk of increasing fuel loads.

We were calling for the continued use of scientific knowledge rather than indulging in knee-jerk reactions from shock jocks who were calling for the unnecessary burning of vast areas, which would possibly cause more damage later. It is important that we look at the best scientific evidence available and use it. Commissioner Koperberg was delighted with the report. He said it was exactly what he had hoped for. It backed him all the way; indeed, we found that he was very competent. The whole report was accepted. Recommendation 10 (b), (c) and (d) stated:

> The Committee recommends that Fire Control Officers and other Rural Fire Service staff be employed by the Rural Fire Service.
>
> The Committee recommends that local councils be involved in the preselection process for Fire Control Officers.
>
> The Committee recommends that local performance agreements be entered into between the Rural Fire Service and local councils regarding management and responsibilities under the *Rural Fires Act 1997*.

Many of these recommendations were adopted, and Commissioner Koperberg found that they helped him enormously to move forward with a better organisation during the tragedy last Christmas. The report was written by Anna McNicol, the director; Roza Lozusic, the senior project officer; and Phaedra Parkins. They did an extremely good job. The commissioner was able to adopt those recommendations, and perhaps they saved a few lives or properties. Things have developed apace since then. The Government reacted to the anguish and anger expressed by people towards those who deliberately set fires. The majority of the fires at Christmas time were deliberately lit, by people with a disturbed mind. So many people who end up in gaol are disturbed. As the Hon. Malcolm Jones said, if these people are gaoled they will be prevented from setting fires while they are in prison.

Unfortunately, some people are pyromaniacs: they get some weird pleasure from seeing fires roaring through properties. We cannot do much about that. Hopefully, those who are aware of this 14-year imprisonment penalty in this legislation will be deterred. We cannot be sure that will happen, so we have to be ready for another eventuality like the one we had last Christmas. It may be next year, or two or three years down the track, but we always have to be vigilant and make sure that our valiant firefighters have the equipment they need to do the job properly and we must make sure that home owners and renters are as prepared as they can be for the worst eventuality.

I urge the Government to look further than just increasing the term of imprisonment for firebugs. It should look also at planning controls, particularly in the outer fringes of the urban area, where there is an interface between the city and the bush. It should look at its duty of control over future developments so that houses built in the future are less at risk, and there is some control over houses that are rebuilt so that they are far more fire resistant than the original houses. I hope that future fires will not be as bad as the fires we experienced last Christmas, but I fear that at some time in the near future they will be. I hope that this one step will help a little and that the Government will look at other measures, including planning controls, to prevent the building of properties that are obviously vulnerable to fires.

The Hon. DAVID OLDFIELD [10.00 p.m.]: I, of course, support the Government's bill in relation to increasing penalties for those lighting fires, but on the significant issues of backburning and fuel reduction I do not think that it can be overlooked that the Green movement, with its lobbying and the problems caused through the National Parks and Wildlife Service, is responsible for many fires getting out of control when, had there been proper hazard reduction, this would not have occurred. It is an extremely serious offence for a mature person to deliberately light fires. In saying that I acknowledge that a child playing with matches can create an equally unfortunate scenario. In some cases they may wish to be seen as the battlers who fight the fires. A mature person who lights a fire is causing a very serious hazard and is guilty of a considerable offence and should be treated as harshly as possible under the law.

If a person dies as a consequence of the deliberate lighting of a fire, the authorities should consider laying manslaughter or even murder charges. The fact that it may not have been the intention of the culprit to kill someone is irrelevant. The fact that the fire was intentionally lit and a criminal act cannot be overlooked in considering the serious consequences that result. So the authorities should consider charging with manslaughter or even murder a person responsible for lighting a fire which resulted in the death of any person. It is terrific if a home and contents lost in a fire are insured but money really does not replace a home. It certainly does not replace the many prized family possessions, heirlooms and photographs of family members—sometimes going back as much as a hundred years. Those things cannot be replaced. I reiterate that a person who lights a fire intentionally should be held in absolute contempt by the community and should suffer the worst possible penalties available. In closing, I state that I would like to see the Federal Government do more to recognise the support of volunteers—not just the volunteer firefighters, who all members of the community respect and are grateful to—who, although not actively fighting the fires, supported the firefighters. Those people cut the sandwiches every day, brought water and were there on the ground doing all of the backup work that was required for the front-line firefighters. It would be good if the Federal Government did more to recognise those people as well.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.03 p.m.], in reply: I thank honourable members for their contributions to the debate. On behalf of the Minister and the Government I place on record the appreciation of the work done by firefighters, especially during the recent fire crisis and emergencies that have been spoken of by most members in their contributions. The bill specifically seeks to do something about the range of practices that have been discussed during the debate in relation to the lighting fires by offenders who, for a variety of reasons, as people have speculated on during the debate, seek to endanger property and life by lighting fires during hazard seasons. The lighting of fires in the course of hazard reduction is recognised and treated according to a different set of standards from those applying to people wilfully seeking to place property and people at risk by their misbehaviour. I understand that no amendments have been foreshadowed, so I take that to mean that the bill has the general support of the House. I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ADJOURNMENT

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.07 p.m.]: I move:

That this House do now adjourn.

AUNG SAN SUU KYI RELEASE FROM HOUSE ARREST

The Hon. JANELLE SAFFIN [10.07 p.m.]: On 6 May 2002 Burma's much-loved and respected Aung San Suu Kyi, Nobel Peace Prize laureate and General Secretary of the Popular National League for Democracy, the political party that won 392 out of 485 seats contested in the 1990 elections—elections which were not honoured, and people are still clamouring to have them honoured—and Companion of the Order of Australia, was released from house arrest, which she had been under since about October 2000, for 18 or 19 months. She was first placed under house arrest in 1989 and has spent a total of eight or nine years under house arrest. During that time, though she has not had the advantage of being able to speak through the media, at least at domestic level, or go about among her people and give interviews and meet with them and talk with them, her popularity has not waned. In fact her popularity has increased. On the day she was released people, understandably, were very happy. I did some interviews on that day. My honourable colleagues know about my longstanding interest and work in Burma, and they knew that I would feel joyful. And I was joyful on that day.

When I did the interviews on Singapore radio and other radio stations I said that I could not take the smile off my face. I said that while it was wonderful that Aung San Suu Kyi had been released, people everywhere who supported democracy hoped that it was a sign of better things to come. Although her release was cause for celebration and jubilation, only one person had been released; more than 1,500 political prisoners are still languishing in gaol in Burma. More than 40 gaols, which are scattered around the country, house many political prisoners who live in intolerable conditions. The fact is that, irrespective of the conditions, they are political prisoners who have been incarcerated simply because of their political views. They have been incarcerated because they expressed the same views as we express in this Chamber.

In May during a visit to Malaysia the military Home Affairs Minister, Colonel Tin Hlaing, said, "There are no political prisoners in Burma." That is nonsense because everybody knows there are political prisoners in Burma. The United Nations has been actively involved in trying to broker a deal to get the political prisoners released. Even after the release of Aung San Suu Kyi, the military dictatorship is still peddling the same nonsense it has peddled for the past 14 years in trying to maintain its control of the country. During the radio interviews I said that her release was a cause for celebration, but I pointed out that human rights violations are continuing across the country, particularly in rural and regional areas where large numbers of ethnic nationalities live, and that people were still subject to slave labour and forced relocation. We can only imagine what it would be like for those people living in their local community and village to be given one hour's notice or five minute's notice to leave the area and to take everything with them. That still happens in Burma.

It was reported that people thought Aung San Suu Kyi would be released and be silenced. I am sure that she is subject to restrictions, although that has not been reported. Immediately upon her release she clearly pointed out that the policies of the National League for Democracy remain unchanged because conditions in Burma remain unchanged. Just before she was released the Burmese military hired a lobbying firm, DCI Associates, which is an American-based firm with links to American political parties, particularly the GOP. That firm was hired on a contract of $450,000 a year to normalise relations with the United States of America. The best way it can normalise relations is by advocating and implementing democracy in Burma, and I hope that it soon does.

PRESIDENT OF THE HELLENIC REPUBLIC AUSTRALIAN VISIT

The Hon. JAMES SAMIOS [10.12 p.m.]: I inform the House of the visit of the President of Greece, Mr Constantinos Stephanopoulos, who visited Australia recently for the first time. I believe that two days of his tour were spent in New South Wales, where he enjoyed the great hospitality of the Australian Greek community. The highlights of his visit included a visit to the Greek Orthodox archdiocese, where he attended a church service and spoke. Later he attended a luncheon reception in his honour hosted by His Eminence Archbishop Stylianos, Primate of the Greek Orthodox Church of Australia.

After the lunch, which was well attended, the President attended a host of other functions including a State dinner. I attended the State dinner at the Regent Hotel and the luncheon at the archdiocese. The State dinner was hosted by the Premier and was attended by a number of the State's Australian-Greek

parliamentarians and more than 500 people. Other functions attended by the President included the opening of the latest extension of St Basil's Homes, the prime nursing home organisation for the aged in New South Wales. The organisation is based at Croydon Street, Lakemba, and provides facilities for 109 beds.

The organisation provides a number of hostels and plays an important role in the care of the aged. The homes represent but one arm of the welfare structure of the archdiocese's Greek welfare and day-care centres. Other bodies play a pivotal role in that regard. Another function attended by the President was the Chamber of Commerce and Industry Forum, again at the Regent Hotel. The last function that I attended during the President's visit was the reception at the overseas terminal at west Circular Quay, together with more than 2,000 members of the Australian Greek community. Speeches that night included those by Archbishop Stylianos, President Stephanopoulos and others.

On that occasion the President made a point of thanking the Australian community for the important role it had played in hosting the arrival of the great wave of Greek migrants following the Second World War, but noted that that hospitality had also been extended to those who had arrived here well before the war. Australians of Greek background have played a pivotal role in the social and cultural development of our multicultural society and, equally, have received a generous welcome from the Australian community. The President will take memories of those successes back to Greece. [*Time expired*.]

PORT KEMBLA COPPER SMELTER

The Hon. IAN COHEN [10.17 p.m.]: Tonight I want to speak about a serious incident that took place on the evening of Saturday 8 June at the Port Kembla copper smelter. Three major explosions ripped through the plant and 100 tonnes of metal overflow from the anode furnace came into contact with water. The explosion shook the ground within a one-kilometre radius of the plant. It shook the homes of residents and rattled the windows, and expelled thick smoke over the town. The operations manager of the Port Kembla smelter said the explosion was due to a furnace malfunction. A steam explosion sparked a fire that damaged two buildings and destroyed the cabling and electrical wiring in the anode casting area.

There were 25 to 30 people on the site at the time. Staff were evacuated immediately. Smoke covered the homes of several residents, but no information was forthcoming from the company about the danger or about what had happened until three hours after the incident. Walls had been moved and cracks centimetres wide appeared in the Anglican Rectory in Military Road. When emergency services and ambulances arrived, members of the public were unable to get any information. Port Kembla Copper has an emergency protocol that includes notifying residents whenever an incident occurs. The operations manager told the media:

> Once the company established there was no likelihood of any further explosions we ran through the community notification protocol and contacted those who we needed to about 8 or 9pm.

Surely these protocols are in place to protect the community at times when the smelter is unstable, not once everything is under control again. Who regulates the protocols to see that they are followed correctly? The current processes are failing the community. Tonight is the eve of the release of an independent review and audit by the CSIRO.

The report was in response to the Illawarra Residents Against Toxic Environments [IRATE], who asked the Department of Urban Affairs and Planning [DUAP] in November 2000 how it would enforce its consent conditions. It is unclear whether this report is the annual environmental audit—required by the consent conditions consolidated instrument M4—which should cover the period April 2000 to April 2001 and be submitted to DUAP within 60 days. If so, the audit for the following year should be due shortly. The review to be released tomorrow only deals with the period to 12 June 2001. Since that date numerous incidents have occurred at Port Kembla copper smelter.

On 30 July 2001 there was a fire in a slag furnace, on 28 September 2001 children were affected by sulphur dioxide gas at school, on 15 February 2002 children were affected by sulphur dioxide gas at school, on 7 March 2002 acidic fallout caused widespread damage to property, on 3 May 2002 residents were affected by sulphur dioxide gas and on 8 June 2002 explosions and fires occurred at the smelter. There needs to be tighter management of these facilities in residential areas. This company is not handling risks to the community and the environment responsibly. The Environment Protection Authority has to date prosecuted the company and fines of up to $150,000 have been imposed for air and water breaches; it has issued on-the-spot fines totalling $12,000 for other breaches; and it has required the installation of additional environmental measures costing more than $6 million.

These improvements have come about because of an active and informed resident action group, known locally as IRATE. They have been doing a fantastic job for years trying to highlight environmental pollution from the original copper smelter. Port Kembla is a safe Labor seat and the Carr Government does not see the smelter as a danger. Honourable members will recall that the old copper smelter was sent off to pollute a suburb of Istanbul. In the past these people have had to survive many problems, including cancer clusters. Now there has been a catastrophe. Local residents have been living with the fear of such an event for years—ever since this copper smelter was developed for the second time.

The explosions on Saturday night were close to a serious catastrophe that could have been life threatening for the people of Port Kembla. IRATE has been campaigning for years. It deserves respect and an acknowledgement by the Government and agencies that this is a very serious issue. I remember the Treasurer saying in this Parliament that it was a wonderful new process, not like the dirty old smelters. There has been a continual breaking of regulations and polluting. I ask the Government to note the explosions on Saturday night.

TRIBUTE TO Mr BEN AUSTIN

The Hon. TONY KELLY [10.21 p.m.]: Tonight I bring to the attention of honourable members the remarkable achievements of local Wellington boy, Ben Austin, a 21-year-old who has been without his left arm since it was amputated at birth. His father, Michael Austin, has been the superintendent of the Wellington pool throughout Ben's life. Ben has trained with his father at that pool. Ben can now swim with one arm better than most people can swim with two arms. His family came from a proud tradition of Labor supporters in Wellington. I am sure that the Hon. John Della Bosca would know his late grandfather, Tom Austin, a life member of the party, and his aunty, Sheila Wallace, another life member. The fact that Ben is a Wellington Country Labor branch member is noteworthy in itself, but tonight I pay tribute to his recent efforts in the swimming pool.

Ben is now recognised as one of Australia's elite swimmers. He will be one of only four Australian swimmers with a disability who competes in the main sports program at the upcoming Commonwealth Games in Manchester. Ben's record speaks for itself. After coming on in leaps and bounds in 1999, when he was adjudged most improved male swimmer at the State sports centre, he went on to win two silver medals and two bronze medals at the 2000 Sydney Paralympic Games: silver medals in the 200 metre individual medley and the 4 x 100 metre freestyle relay, and bronze medals in the 100 metre butterfly and the 4 x 100 metre medley relay. It was a fantastic achievement. Ben's performances have gone from strength to strength in the past two years, since the 2000 Paralympic Games.

At the 2001 Australian championships held in Tasmania last year Ben secured five gold medals. At the United States nationals in Phoenix, Arizona, Ben followed up his Tasmanian results by winning a further four gold medals in a great all-round performance—the 50 metre and 100 metre freestyle, the 100 metre breaststroke and the 100 metre butterfly. He won three gold medals at the meet in Argentina last year, including setting a world record in the 200 metre individual medley. At the recent Australian championships and the trials for the Commonwealth Games Ben won another four gold medals and, in doing so, set a world record in the 100 metre freestyle. It goes without saying that at that meet Ben qualified for a place in the Commonwealth Games team.

Ben's outstanding record, with victories and records in a range of swimming styles and over a range of distances, attests to his talent and determination to be the best. Ben's drive and determination has helped him to hold an amazing seven Australian records in the 200 metre individual medley, 100 metre butterfly, breaststroke and freestyle, and the 50 metre butterfly, breaststroke and freestyle. Ben's next challenge will be as part of the Australian swim team at the twenty-seventh Commonwealth Games at Manchester starting on 25 July. As I said, Ben has the honour of being one of only four Paralympic swimmers chosen to compete in the Commonwealth Games, the first time that Australian Swimming has incorporated elite athletes with a disability into its team.

This is a welcome decision by Australian Swimming, which will help promote the achievements of our disabled athletes. As I speak, Ben is preparing hard for the Games, whilst competing in the United States nationals in Seattle. After that he will attend the second Telstra Grand Prix at Homebush Bay next month before heading off for the Commonwealth Games pre-amp in Stuttgart, Germany. While most of our Commonwealth Games team will be able to wind down after Manchester, Ben and his colleagues will be hard at work preparing for the Paralympic World Championships at Mar Del Plato, Argentina, in early December. As remarked in a recent edition of the *Wellington Times*, "it's enough to give anyone jetlag." Ben Austin is a credit to his family, his home town of Wellington, his State and his nation. Someone remarked to me today that a lot of good things come out of Wellington. Ben Austin is a notable example. I wish Ben and all our other athletes the best in Manchester.

SYDNEY SWANS STADIUM AUSTRALIA GAME

The Hon. CHARLIE LYNN [10.25 p.m.]: Tonight I pay tribute to the Sydney Swans and the success of their first game at Stadium Australia on Saturday 25 May. The game attracted the largest ever crowd to an Australian Football League [AFL] game outside Victoria. I congratulate them on their vision in dedicating this inaugural game towards a celebration of indigenous culture. AFL is Australia's indigenous football game. Indeed, it is thought that the spirit of the game preceded white settlement. This game was called marn grook, which translates to game ball. It involved two teams competing with a ball, most probably formed from a stuffed possum. It was therefore appropriate that the trophy for the inaugural match between Essendon and the Sydney Swans was named the marn grook trophy. It will become an annual fixture between these two teams at Stadium Australia.

The theme of the game was a celebration of indigenous culture and the recognition of the contribution indigenous players have made to the development of the code. This was more than a football match, and the outstanding success of the game was due to the calibre of the members of the advisory board drawn together by the Chief Executive Officer of the Sydney Swans, Kelvin Templeton. The advisory group was chaired by Senator Aden Ridgeway and included leaders such as Geoff Clark, Director of the Aboriginal and Torres Strait Islanders Commission; Linda Burney, Director-General of the New South Wales Department of Aboriginal Affairs; Beverly Knight, Director of the Essendon Football Club; Graham John, Chief Executive Officer of Australia Post; Hetti Perkins, Director of the Bangarra Dance Theatre and Art Gallery; and two outstanding Swans footballers, Adam Goodes and Michael O'Loughlin.

The group was supported by the Sydney Swans marketing staff, and I pay tribute to Rachel Schofield for her role in co-ordinating all aspects of the planning. The calibre of the advisory group and the professionalism of the Sydney Swans marketing staff were a guarantee of success, but it still took a lot of hard nuts and bolts work to make it happen. As I have already said, this event was much more than a football match. For example, some 4,000 indigenous kids from around New South Wales attended the game as guests of the Sydney Swans. Indigenous sporting greats including past football champions Barry Cable, Steven Michael and Michael Long, together with other champions such as Nova Peris-Kneebone, Cliff Lyons, Rugby Union legends the Ella Brothers, and Tony and Anthony Mundine participated in the pre-match parade. The Bangarra Dance Theatre, together with Leah Purcell, provided spectacular pre-match entertainment.

The curtain-raiser match was played between the Northern Territory and the New South Wales Rams. This was an outstanding opportunity for young indigenous footballers to play in the electric atmosphere of Stadium Australia. As the crowd moved towards the stadium prior to the game they were met with a spectacular "sea of hands" display in the shape of a football by Australians for Native Title and Reconciliation. The display was interspersed with entertainment hubs featuring concerts and dance by indigenous artists and fun activities for kids which included storytelling, traditional face painting and didgeridoo clinics. A multi-themed photographic exhibition was staged in the Southern Pavilion, near the Olympic Cauldron, which included "Marn Grook—100 years of indigenous football". There was a black and white photographic essay on grassroots football in the outback and portraits of leading Swans and Essendon indigenous players.

The Swans hosted a grand dinner for 900 people immediately prior to the game. This function brought together representatives from across the political spectrum, business leaders, indigenous leaders and sporting champions from all disciplines. It bridged divides as only sport can do. The highlight of the evening was a display of Australian Rules footballs painted by famous indigenous artists. The sale of these footballs is expected to raise between $150,000 and $200,000, which will go towards a Sydney Swans-Bangarra scholarship, which will support one indigenous dancer and one indigenous footballer each year. The game was a blockbuster, with the Sydney Swans going into the match as underdogs. Essendon took an early lead, as expected, but the Swans staged a gallant fightback, to forge ahead early in the final quarter. Unfortunately, Essendon rallied and was able to snatch victory from the jaws of defeat in the final stages of the game. It was a disappointing defeat for the Sydney Swans but a great win for the spirit of the game and an outstanding tribute to indigenous culture. I congratulate all those who contributed to the success of the event.

BETHLEHEM PEACE CENTRE

The Hon. RICHARD JONES [10.29 p.m.]: Two years ago I went with a parliamentary delegation to Egypt, Palestine, Israel and Jordan and met with a number of leading Palestinians. We met with the Egyptian Foreign Minister and with members of Likud, Shimon Peres and others. We met with probably the whole of the Palestine Government except for Yasser Arafat, who was in Washington at the time. Some of the people we met

then are now dead. I am really shocked by what has happened to Palestine since we were there. We had real hope for peace and a separate Palestinian state. I have been reading reports from the Palestinian Delegation that have been coming through in my email. Two or three of these reports have been coming through every day. One was a press release from the Bethlehem Peace Centre. The press release details the extensive damage and destruction left behind by the Israeli occupation forces during their 38-day occupation of Bethlehem. According to the centre's report:

> … the traces of what must have transpired inside the Bethlehem Peace Center between 2 April and 10 May 2002 speaks of unimaginable arrogance, violence, insolence and a total disrespect for civil society and human dignity.

The email continues:

> The director of the Bethlehem Peace Center entered the premises of the Bethlehem Peace Center the evening of Friday 10 May, while the Israeli occupation soldiers were still evacuating the town from the back of the building. Within the hour, diplomats of the Swedish Consulate General in Jerusalem joined him. "What we encountered was a scene of utter devastation, inexplicable and inexcusable even under the circumstances of a military occupation. This is certainly not the hallmark of a civilized army", he expressed.

The Bethlehem Peace Centre, which had been a gift from Sweden to Bethlehem and is dedicated to the promotion of peace, democracy, religious tolerance and cultural diversity, was coated in a mixture of dirt, wine, urine, eggs, rotting food, spilt coffee and tea from wall to wall, room to room and floor to floor. The centre reported that the bathrooms had faeces and vomit in the toilets, on the floors and on the walls. The report added that the centre's furniture was rearranged to meet the needs of the Israeli military administration, with not a single desk or chair remaining in its original place. Doors and drawers were forced open, a number of them having been blasted with dynamite. Hundreds of keys were strewn throughout the building, including under various toilet seats. All cash boxes were compromised. Moreover, the centre reported at least seven computers and printers, fax machines, a heavy-duty photocopier, all the telephones in the building, a laminator, two scanners, a video projector, a DVD, a VCR, two televisions, two slide projectors, two sound mixers, CD players, microphones and a digital camera were stolen by the Israeli occupation forces. Many official files and scores of personal items, including private family photographs, were also taken.

The report concluded that the defilement of the Bethlehem Peace Centre proved beyond a shadow of a doubt that the destruction of Palestinian civil society and the looting were not only tolerated by the military but were orchestrated by the Israeli occupation army at the highest level and were, indeed, one of the objectives of Operation Defensive Shield. I have received a number of reports about the enormous damage done by the Israeli army and the gratuitous damage done to the infrastructure of Palestine. One report came from a teacher of sociology at the Bir Zeit University, Zuhair Sabbagh, who gave a long report about the destruction of parts of Ramallah. He stated:

> Electricity, telephone and traffic pylons were knocked down and crushed. Debris, rubble, trees and crushed cars were everywhere. Israeli bulldozers dug out and cut water pipes. Ramallah was simply devastated.
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> We tried to buy some food, but food stores were almost empty. We could not find bread or milk. So we went to the vegetable market, to find that only a few old vegetables were on sale. While shopping, I learned that many stores, supermarkets, cultural centers, educational institutes, television and radio stations, and banks were ransacked and vandalized by Israeli troops. This proved violence was directed at the economy and culture of indigenous Palestinians.

He referred to a time when three tanks and two troop carriers came to his apartment building. He described a scene in which his 10-year-old daughter, Orjuwana, went to collect her dearest dolls and a teddy bear as the troops came in. He states:

> A moment later, she went back to her room and brought with her a children's book in Hebrew. She displayed the book between teddy bear and the two dolls. When I asked why she had brought the Hebrew book, she innocently said: "I don't want the soldiers to take away my dolls and teddy bear. When the soldiers enter our apartment, they will see the book and will not take my dolls and teddy bear.

He refers also to the soldiers dynamiting the multilock doors of the apartments one by one and terrifying the inhabitants, although the soldiers could have entered without having done so. He also refers to the gratuitous destruction of building after building in Ramallah. As I said earlier, some of the people we met are now dead, but one person we met was Marwan Barghouti, who, at the time the report was written, was a member of the Palestinian Legislative Council and had been tortured and detained for over 35 days. The report also states that 5,000 people, including female prisoners, have not been spared from torture. What the Israeli Army is doing is outrageous. The world should not sit by and watch it happen.

CAMDEN BYPASS PEDESTRIAN OVERBRIDGE

The Hon. PETER PRIMROSE [10.34 p.m.]: Recently the Hon. Charlie Lynn, my neighbour in Camden south, gave a somewhat satirical overview of the trip by car from Camden to Sydney. Closer to both of our homes in Camden south is an area known as the Camden bypass. It is a long, good road that has recently been upgraded. By definition, it bypasses Camden. Before the expressway went through, it was one of the major routes to Canberra. During recent years major residential areas have developed on the east and west sides and each residential area is inaccessible from either side of the motorway. The only access way is approximately six kilometres from Camden south. The motorway is otherwise impossible for pedestrians to cross. An area near the Camden south nursing home is traversable but, other than that, walls and bridges, including the one-kilometre long Macarthur bridge, make it impossible for pedestrians to cross the motorway.

I am sure the Hon. Charlie Lynn, the honourable member for Camden and others would be well practised at dodging young people who are moving back and forth across the motorway to and from school and dodging people who are trying to get through spaces in the fence late at night. That is very dangerous in a 100 kilometre an hour zone. I am pleased that the Roads and Traffic Authority [RTA] recently indicated to Camden Council that it proposes to fund construction of a pedestrian overbridge in the area. Some people in the local community have expressed concern that a pedestrian overbridge may open up the area to what they have described as hoodlums, but it will merely open up the area to other residents. I urge Camden Council to take up this great opportunity to protect young lives along the Camden bypass by approving the bridge.

Motion agreed to.

The House adjourned at 10.37 p.m.